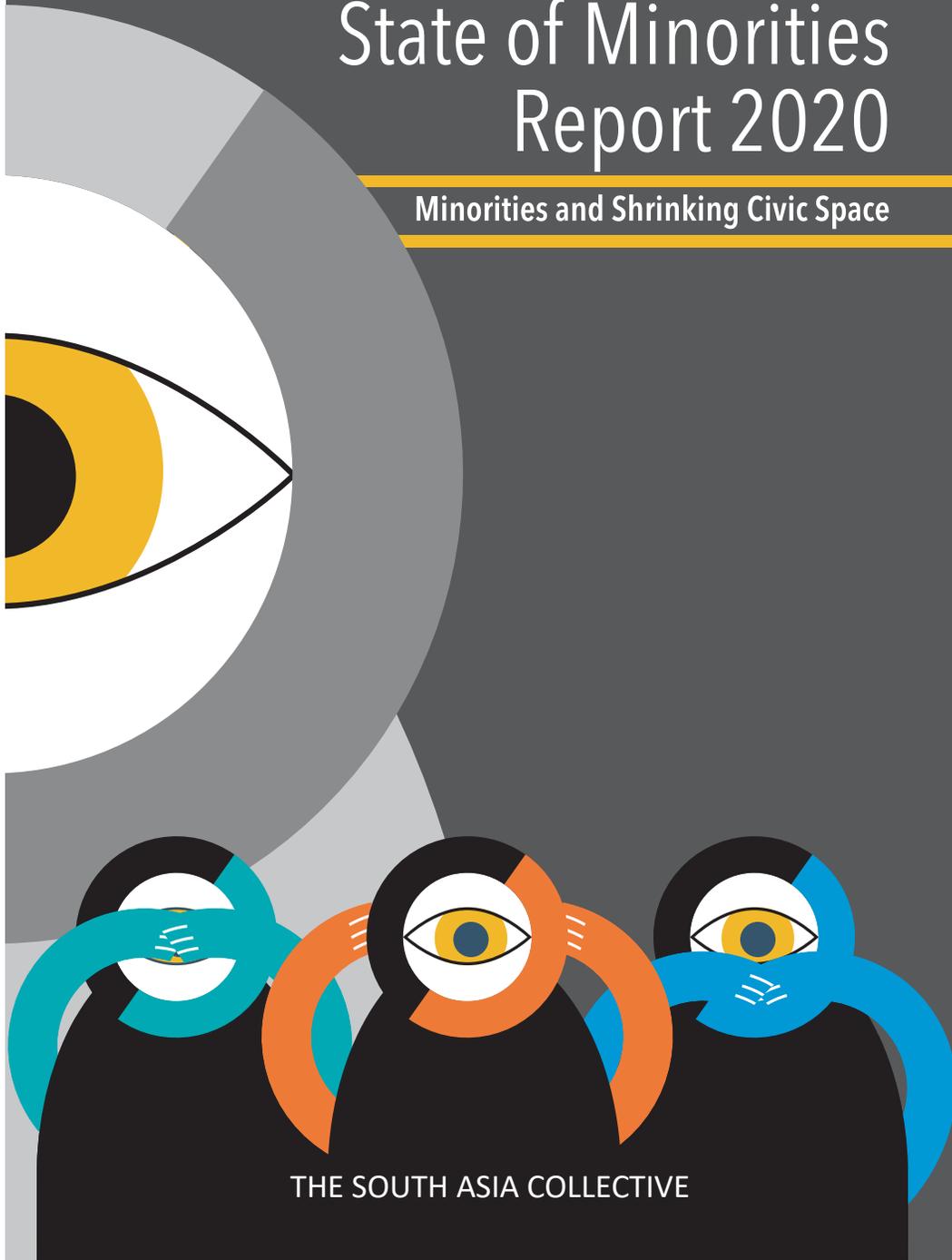


# South Asia State of Minorities Report 2020

Minorities and Shrinking Civic Space



THE SOUTH ASIA COLLECTIVE



**South Asia  
State of Minorities  
Report 2020**



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**South Asia State of Minorities Report 2020**  
*Minorities and Shrinking Civic Space*

Edited by a team at Social Science Baha, Kathmandu, consisting of Deepak Thapa, Ritika Singh and Shambhawi Poudel with Khem Shreesh and Sudeshna Thapa.

Cover design and graphics by Promina Shrestha and Animesh Maharjan.  
Text pages design and layout by Chiran Ghimire.

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South Asia Collective  
Email: [sac@thesouthasiacollective.org](mailto:sac@thesouthasiacollective.org)  
Web: [thesouthasiacollective.org](http://thesouthasiacollective.org)  
Facebook: [facebook.com/thesouthasiacollective](https://facebook.com/thesouthasiacollective)

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## Executive Summary

Across South Asia, civil society is being increasingly constrained. It is either too nascent, due to late democratic development, or where it has had a little history of growth and nurturing, is facing strong challenges. Anti-democratic authoritarian tendencies and greater securitisation of laws and practices appears to be the main drivers of this narrowing trend, with the mid-2010s appearing to be the period of convergence for this constriction in many of the countries. Democracy champions, human rights defenders (HRDs), and activists have been in the crosshairs of authorities everywhere for challenging state actions and speaking out. A great deal of the narrowing of space for civil society concerns minorities, which is also due to the hardening of majoritarianism across the region.

This report focuses on the status of civic space in South Asia, specifically for minorities. A comprehensive and inclusive definition of civic space includes social movements, national and international non-governmental organisations (NGOs), civil society organisations (CSOs), the media, academics, and activists, among others. A functional civic space depends on the rights i) to associate, ii) assemble peacefully, and iii) freely express views and opinions. Hence, each chapter of the report seeks to explore the status of these three ‘basic freedoms’ in several ways.

The chapters relied on desk research with a review of published materials on civic space for minorities in the respective countries. The chapters also include assessments of laws and policies to regulate civic space as well as the bills proposed over the years to capture the general mood of the government over time vis-à-vis civic space and civil society. Some primary data was collected through an online expert survey for Afghanistan, India, Pakistan and Nepal to assess the public perception on civic space there. While a similar survey was undertaken in all the countries, the pandemic as well as other factors led to a very low number of

respondents, making the analysis moot. The pandemic also resulted in the research for individual chapters being mostly confined to materials available online.

### **Key Findings**

The constitutional rights of freedom of expression, association, and assembly in all the countries—Afghanistan, Bangladesh, Bhutan, India, Nepal, Pakistan, and Sri Lanka—have been increasingly violated by superseding legislation introduced by the respective governments within the last decade or so. One prominent example is the increased regulation of registration of CSO/NGOs. As a consequence, civic space is becoming more restrictive over time, creating a hostile environment for CSOs/NGOs, progressive media entities and human rights defenders.

- i. *Freedom of Expression:* The region has seen a curtailment of freedom of expression. Some examples include the International Covenant on Civil and Political Rights Act 2007 being deployed to curb freedom of expression and silence critics in Sri Lanka rather than arrest persons inciting ethnic/religious tensions. In Afghanistan, the Mass Media Law 2009 was meant to consolidate freedom of expression but instead contains clauses that require the upholding of Islam, which has been steadily weaponised by the government in recent years. Freedom of expression is also affected in Bangladesh, particularly in light of Digital Security Act 2018 under which, posting false, provocative, indecent or sensitive information on websites or any electronic platforms that is considered defamatory or likely to disrupt the country's law and order situation, or harm religious sentiments, is a punishable offence. In Bhutan, under the National Security Act 1992, speech that creates or attempts to create 'hatred and disaffection among the people' or 'misunderstanding or hostility between the government and people' can be punished with imprisonment. In India, there have been several instances of censorship of TV news channels, with channels that have broadcast views

critical of the government being banned. In Nepal, there has been an amendment proposed to the Media Council Bill about journalists requiring a licence to work while the Criminal Code of 2018 can punish journalists for publishing information deemed ‘confidential’.

- ii. *Freedom of Association:* The countries are wielding the power to deny registration or renewal of registration of CSOs/NGOs to attempt to regulate them. In Bhutan, CSOs are reluctant to engage in advocacy efforts for fear of having their registration certificates revoked. India’s civil society actors—its human rights lawyers, activists, protesters, academics, journalists, liberal intelligentsia—in fact, all those who have spoken up against government excesses and majoritarianism, have increasingly been under attack. Alongside, the Foreign Contribution (Regulation) Act, which regulates foreign donations to entities in India, has been further weaponised against progressive and minority NGOs. In Bangladesh, under the Foreign Donation (Voluntary Activities) Regulation Act 2016, registration of NGOs has been made mandatory for receiving foreign donations. In Pakistan, NGOs and INGOs are subject to extensive regulation involving multiple, lengthy procedures of registration, security clearance, and approvals for funding. The entire process is characterised by an absence of transparency and limited civilian oversight, resulting in arbitrary rejections of NGO applications, which severely curtails their ability to function. In Nepal, existing laws are cumbersome already, while new bills proposed will ensure severe curtailment of the civic space. In Afghanistan, the NGOs law includes a burdensome ‘re-registration’ clause which implicitly allows the government to refuse to register a specific NGO, leading to its automatic removal.
- iii. *Freedom of Assembly:* Violence against religious minorities is being used strategically to implement fundamentalist and supremacist national rhetoric. In Afghanistan, the Assembly Law places significant restrictions on gatherings, protests, and demonstrations, a serious concern for HRDs. In India, in

order to forestall any dissent against anti-minority policies, authorities have imposed effective martial law—snuffing out civic space completely in Muslim-majority Kashmir—but also severely limiting it to Muslims and other groups protesting anti-minority policies and practices elsewhere. Public protest is not an outlet available to religious minorities in Pakistan as most fear violence and retaliation by extremists and Christians cannot effectively gather and pray because of the increasing opposition to the existence of churches in non-metropolitan areas. In Nepal, Christian faith-based NGOs also report facing increased scrutiny. In Sri Lanka, the period after the Easter attacks of April 2019 saw Muslims subjected to discrimination, harassment, arbitrary arrests and detention, and even violence.

- iv. *Targeting of Religious Minorities:* Civic space for religious minorities, too, has been curtailed. In Pakistan, lawyers who work as human rights activists, especially those defending cases of minorities related to blasphemy, but also Christian and other minority lawyers continue to face threats for the work they do. The Blasphemy Law has been used to enable violence against religious minorities in Pakistan. There have been reports of Christians being deprived of state benefits in Bhutan. India has become a dangerous and violent space for Muslim minorities. In December 2019, an amendment in the Citizenship Act was passed which opened a pathway for a category of illegal immigrants, specifically leaving out Muslims. In the run-up to the legislation, the government also declared its intentions to create a National Register of Indian Citizens, which would have the potential to render many Muslims stateless.
- v. *Targeting of HRDs:* In Afghanistan, since 2014, HRDs, civil society activists, and journalists have been constantly exposed to threats, harassment, intimidation, detention, and killings by both state and non-state actors. There is an adverse environment for CSOs and HRDs in Bangladesh with the Digital Security Act used to suppress freedom of speech and harass writers, activists, and journalists—often

for their feedback on social media. In India, HRDs have also reported being subjected to a campaign of threats and intimidation, by state agencies and ideological groups aligned to them. In Pakistan, journalists, writers, and human rights activists who raise a voice and advocate for the rights of minorities or simply talk about free speech are being seen as voices to be suppressed. In Sri Lanka, too, there has been an adverse environment for HRDs, the pinnacle of which is the government announcing the country's withdrawal from Human Rights Council Resolution 30/1 and 40/1.

- vi. *Covid-19 Pandemic*: The Covid-19 pandemic has resulted in a further attack on civil liberties in many of the countries. While states have undermined the role of NGOs in the country through undue control over them or questioning their role in handling the pandemic, Covid-19 has also presented opportunities for governments to carry out reprisals and punitive actions against political opponents through selective fault-finding and retaliatory actions. In most of the countries, the pandemic has taken away the livelihood opportunities of daily wage workers and low-income families, most of whom are disproportionately minorities in their countries. Protests from the civic space on their government's handling of the coronavirus have been suppressed.

It becomes very clear that in the region, civic space for minorities, specifically religious minorities, is shrinking. The national governments have taken various steps to curtail freedoms of expression, association and assembly, including by means of restrictive laws and regulations. There has been specific targeting of HRDs and religious minorities. The Covid-19 pandemic has further restricted civic space, as governments exert undue control over organisations and individuals. There is the looming threat that the measures in place to combat the pandemic could carry over into the future indefinitely, severely shrinking civic space further.

## **Key Recommendations**

### *For national governments*

- i. Abide by international commitments agreed upon by the country.
- ii. Remove all legal contradictions existing in various laws of the country and adjust them to international treaties to which it is a signatory.
- iii. Specifically, remove provisions from existing laws that make it difficult for civil society organisations to register, re-register or function in the country.
- iv. Recognise minorities in the constitution, if not done so already, and ensure constitutional provisions to criminalise discrimination of all forms against minorities.
- v. Improve the enabling environment and develop an effective protection mechanism for HRDs and civil society actors in close consultations with all stakeholders, including CSOs and human rights organisations.
- vi. Implement effective and holistic action to eliminate the underlying motives for threats to religious minorities and civic space for minorities, and to combat growing fundamentalist voices threatening a free and democratic society.
- vii. Take swift action to tackle rising terrorism and violence, ensuring impartial investigations and the prosecution of those responsible for attacks against religious minorities, in order to end the culture of impunity around these crimes.
- viii. Implement all the recommendations the countries receive on the circumstances of HRDs provided by the UN Special Rapporteur and other relevant reports.
- ix. Ensure that the Covid-19 pandemic does not result in long-term curtailment of civic space in any way.

### *For the international community*

- i. Ensure greater attention by UN and other international entities on civil and political rights violations in South Asia.
- ii. Facilitate the development of South Asian regional initia-

tives and mechanisms to address various forms of restrictions of civic space in the region.

*For civil society/minority groups*

- i. Foster greater regional civil society initiatives to push back against restrictions by national entities.
- ii. Enable channels for greater solidarity across borders, and expressions of support for victims of targeting in individual countries.
- iii. Facilitate and participate in greater sharing and learning between various groups across borders.



## Foreword

This timely report highlights several familiar and alarming themes, including how Human Rights Defenders standing in defence of human rights of minorities often bear the brunt of restrictions and targeting. Lawyers in Pakistan defending cases of blasphemy particularly against minority religions and sects, and all those NGOs and HRDs speaking for rights and freedoms of minorities, face threats to their work. Authorities in Nepal target NGOs hiring Christian staff. In Afghanistan, HRDs remain under threat from state and non-state actors. In Bangladesh, the cybercrime law enables the targeting of HRDs. In India, HRDs and religious minorities protesting discriminatory laws and practices have faced restrictions, violence, criminal defamation, detention and harassment. And in Sri Lanka, there has been worsening environment for HRDs, including Sri Lanka's withdrawal in February 2020 from Human Rights Council Resolutions 30/1 and 40/1, meant to promote reconciliation, accountability and human rights in the country.

High Commissioner for Human Rights Michelle Bachelet rightly describes civic space as 'the lifeblood of any healthy democracy and society'. But civic space is under attack all over the world, with core civic freedoms of expression, association, peaceful assembly widely denied. Restrictive legislative and administrative provisions have been hallmarks of repression, with Human Rights Defenders often the prime targets. There is no more direct threat to civic space than the targeting of HRDs.

This important report reminds us all that South Asia, home to a fourth of humanity, mirrors these global trends. A recent report claimed 97 per cent of the region's population lives in condition where civic space is 'repressed', just a tier better than 'closed'. Throughout the region, states are increasingly resorting to censorship, imposition of restrictive laws, criminal defamation,

harassment and detention of protesters, and the targeting of HRDs to suppress peaceful protests.

Despite protections enshrined in international law and national constitutions, people continue to be excluded on the basis of their identities, with minorities suffering disproportionately. These trends are rooted in backsliding of democracy and the rule of law and a surge in populism.

South Asia Collective's *South Asia State of Minorities Report 2020: Minorities and Shrinking Civic Space*, exposes how this erosion is taking place across the region—with a focus on trends and consequences for South Asia's sizeable minorities, religious as well as ethnic, linguistic and caste. The findings of the report are sobering. We will do well to dwell on them.

The report notes that while some states—including Bhutan—have yet to see much civic space emerge, the general trend across the region is of constitutional guarantees of freedoms of association, assembly and expression being diluted over the past decade. This includes the increased regulation of NGOs and their access to foreign funding. Another common trend—seen for example in Afghanistan, Pakistan and India—is to deny NGOs registration or renewal of licenses.

Other recent legislation limits freedom of opinion and expression, in the guise of preventing disharmony and disaffection. Authorities are resorting to Internet shutdowns, including in India, Pakistan, Sri Lanka, and in Bangladesh specifically against Rohingya refugees.

As elsewhere in the world, the Covid-19 pandemic has provided a pretext for limiting freedoms, with authorities introducing further restrictions on HRDs, and securitisation of laws in the name of combating the pandemic and undertaking emergency response.

Most South Asian nations constitutionally guarantee freedoms of association, assembly and expression. All South Asian countries (except Bhutan) have also ratified the International Covenant on Civil and Political Rights (ICCPR), and other instruments that guarantee 'basic freedoms'. But restrictions on these freedoms are widespread in the region, and growing. The targeting of HRDs is becoming more common.

*Foreword*

We need to rethink how societies can better function during and after the pandemic. HRDs must be at the centre of these discussions. Healthy civic spaces can help build strong, healthy democracies in the region. And the South Asia Collective can have a key leadership role in this by continuing its documentation and advocacy, and by continuing to press for the protection of HRDs.

**Mary Lawlor**

Special Rapporteur on the Situation of Human Rights Defenders



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The South Asia Collective  
October 2020



## Note on the South Asia Collective

A group of human rights activists and organisations that dream of a just, caring and peaceful South Asia came together in December 2015 to document the condition of the region's minorities—religious, linguistic, ethnic, caste and gender, among others—hoping this would help in bettering outcomes for South Asia's many marginalised groups. We call ourselves The South Asia Collective.

We have since been able to rally other like-minded groups and platforms to our cause. Building on this initial success, we have also begun experimenting with small-scale practical support to minority groups across borders, to nurture their capacity for better outcomes for minority communities, working at local and regional levels. This coming together of like-minded groups is particularly gratifying given the otherwise fraught political environment in the region, which militates against any serious regional effort by state parties on minority and human rights. It has been left to civil society initiatives to try to pave the way in the hope for more formal efforts, going forward. Eventually we want to see the establishment of a South Asia charter of minority and human rights, and regional and national mechanisms to enforce those.

The members of The South Asia Collective are:

- Formation, Awareness & Community Empowerment Society (FACES) Pakistan, Lahore
- Law & Society Trust (LST), Colombo
- Minority Rights Group International, London
- Nagorik Uddyog, Dhaka
- Social Science Baha, Kathmandu
- Citizens Against Hate, India



## Note on the Contributors

**Elaine Alam**, a development and human rights practitioner who has worked in the sector since 2007, is a founder-member and Secretary General of FACES Pakistan. She has extensive experience in poverty reduction programmes and community development in both policy and practice and specialises in development management. She is also currently one of the key actors providing technical support to human rights policy and implementation authorities in Punjab Province. She also works with the Working Group on Freedom of Religion & Belief and has recently advocated for recommendations to the Single National Curriculum, forced conversions, shrinking civic space, the rights of transgenders, the rights of women especially religious minorities as well as climate justice.

**Jeevan Baniya** is Assistant Director at Social Science Baha, Kathmandu. He completed his PhD in Political Science from the University of Oslo. He also teaches international relations at Tribhuvan University. His academic expertise and interest include public policy, state-society relations, democracy and development, labour and migration, disasters, etc.

**S.M. Masum Billah** is Associate Professor of Law, Jagannath University, Bangladesh. He earned his PhD from Victoria University of Wellington, New Zealand. An alumnus of Rajshahi University, Dr Billah was a short-term visiting fellow at the SARCPL, Stellenbosch University, South Africa. He is the author of *Ainer Vab O Ovab* (The Art and Inert of Law). He is actively engaged with the Human Rights Summer School in Dhaka run by the Empowerment through Law of the Common People. His research interests include human rights, constitutional property and legal history.

**Sajjad Hassan** is an Indian human rights researcher and trainer, and the convenor of the South Asia Collective.

**Zakir Hossain** heads the Nagorik Uddyog (Citizens' Initiative), a human rights organisation working to promote human rights, access to justice and good governance in Bangladesh. Zakir has been an active, vocal and well-known human rights and environmental activists in Bangladesh for the past 25 years. He contributes to mobilise Dalits and socially excluded communities in Bangladesh. As an activist, the area of his present work includes access to justice, labour rights, human rights, advocacy, campaigns, reporting and building social movement through empowering the communities.

**Monjurul Islam** is a human rights activist, actively involved with the rights of socially excluded people and Dalit community members. He has 15 years of experience in working with development and human rights and has contributed to a good number of research publications, articles, working papers, policy briefs and so on. Currently, he works with Nagorik Uddyog as Policy Advocacy Coordinator and engages with national, regional and international advocacy to promote the rights of Dalit, indigenous peoples and other minorities.

**Shahnaaz Khan** has a background in peace and conflict studies and has worked on issues of identity-based violence and minority rights, including the *South Asia: State of Minorities Report 2018*. She is currently working in the education sector towards transforming curriculum and pedagogy to address identity, power, and marginalisation within India's education system.

**Saroj K. Nepal**, a Bhutanese citizen, is a social scientist. In a career spanning 30 years, he worked for the Royal Government of Bhutan as a sociologist, and with Danida for two years as Programme Officer for Health and Good Governance Sector Programmes and as a Social Development Consultant. He has completed assignments on social themes and issues in a range of sectors, with unilateral

and bilateral donors and development banks. He also has developed project proposals, and undertaken monitoring and evaluation. He recently took up a new position as Executive Director (Interim) of the Centre for Research on Bhutanese Society (CRBS) that he co-founded in 2020. He has engaged with the South Asia Collective since 2018 with contributions to the annual publications and discussions held on-site in the region.

**Shambhawi Paudel** is a Research Associate at Social Science Baha. She is a human rights lawyer with research interest in cross-sectional application of human rights standards in society. She completed her LLM in Human Rights Law, specialising in international justice, from the Central European University, Hungary. Her master's thesis was a study on the right to access abortions and sex selection in China, India and Nepal. She has worked in different governmental and non-governmental organisations on issues such as reproductive rights, LGBTIQ+ advocacy, state transparency and accountability, and arms control.

**Ambika Satkunanathan** is an Open Society Fellow (2020-2021). From October 2015 to March 2020, she was a Commissioner at the Human Rights Commission of Sri Lanka. Prior to that, she functioned as the Legal Consultant to the UN Office of the High Commissioner for Human Rights in Sri Lanka. Her research and advocacy have focused on transitional justice, custodial violence, prison reform, militarisation, gender and Tamil nationalism. Her publications include contributions to the *Oxford Handbook of Gender & Conflict*, the *Routledge Handbook on Human Rights in South Asia*, and *Contemporary South Asia*. She is Chairperson of the Neelan Tiruchelvam Trust, an Sri Lankan grant-making organisation and Vice-Chairperson of Urgent Action Fund Asia & Pacific, a regional feminist grant making organisation. Ambika holds a Master of Laws (Human Rights) degree from the University of Nottingham, where she was a Chevening Scholar, and has earned bachelor's degrees (LLB/BA) from Monash University, Australia.

**Ritika Singh** is a researcher based in Kathmandu. Her research interests include labour and migration, social construction of gender relations and inequalities, social inclusion, and representative policymaking. She earned her MA in International Relations: Global Governance and Social Theory from BIGSSS, a joint programme between Jacobs University and University of Bremen, Germany. She has been working in the development sector in Nepal in various capacities for more than a decade. Currently, she is a Research Associate at Social Science Baha, where she is primarily engaged with research on minorities in South Asia, and on Nepali migrant workers.

**Abhimanyu Suresh** is a researcher with the South Asia Collective. He holds a bachelor's degree in Financial and Investment Analysis from the University of Delhi and a master's in Development Studies from the Tata Institute of Social Sciences, Mumbai. Abhimanyu works on issues of exclusion and marginalisation and accountability.

**Sudeshna Thapa** is a human rights lawyer and holds an LLM in International Human Rights Law from Lund University, Sweden. She has previously worked as a Research Assistant to the UN Special Rapporteur on Human Rights and Toxics, involved, among others, in research related to the human rights implications of exposure to toxic and hazardous substances on minorities. She is currently a Research Officer at Social Science Baha, where she is primarily involved in research and writing on issues pertaining to Nepali migrant workers. She writes regularly on a range of socio-legal issues including minority rights and social inclusion.

**Abdul Rahman Yasa** is a Policy and Research Officer with Civil Society and Human Rights Network. He has an MA in Politics and Security from the OSCE Academy in Bishkek, and a BA in Political Science. Abdul has served with different national and international organisations in Afghanistan. He has worked as a consultant with the International Foundation for Electoral Systems (IFES), and as a Development Trainer with Creative Associates

*Note on the Contributors*

International Inc. His work as a Government Policy Officer with Independent Directorate of Local Governance of Afghanistan and as Civilian Consultant with the Ministry of Interior of Afghanistan between 2012 and 2018 has provided him with the opportunity to look at governance practices and challenges in a broad range of institutional issues. His focus is democratic development, anti-corruption, research, women and peacebuilding, human rights, and security studies (Central Asia).



## Abbreviations and Acronyms

ABVP	Akhil Bharatiya Vidyarthi Parishad
AFSPA	Armed Forces Special Powers Act
AIHRC	Afghan Independent Human Rights Commission
AIL	Access to Information Law
AMU	Aligarh Muslim University
ARA	Association Registration Act
ASWJ	Ahl-e-Sunnat Wal Jama'at
AWP	Awami Workers Party
BASL	Bar Association of Sri Lanka
BJP	Bharatiya Janata Party
BNP	Bangladesh Nationalist Party
CA	Constituent Assembly
CAA	Citizenship Amendment Act
CBI	Central Bureau of Investigation
CERD	Convention on the Elimination of All Forms of Racial Discrimination
CHRI	Commonwealth Human Rights Initiative
CHT	Chittagong Hill Tracts
CIC	Chief Information Commissioner
CID	Criminal Investigation Department
CJP	Centre for Justice and Peace
CM	Chief Minister
CMDP	Citizens' Movement for Democracy and Peace
CPSC	Centre for Promotion of Social Concerns
CRC	Convention on the Rights of the Child
CrPC	Code of Criminal Procedure
CRPD	Convention on the Rights of Persons with Disabilities
CSHRN	Civil Society and Human Rights Network
CSO	Civil Society Organisation
DMC	Disaster Management Centre
DSA	Digital Security Act

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EAD	Economic Affairs Division
ED	Enforcement Directorate
FATF	Financial Action Task Force
FCRA	Foreign Contribution Registration Act
FIA	Federal Investigation Agency
GDP	Gross Domestic Product
GSP	Generalised Scheme of Preferences
HC	High Court
HRCP	Human Rights Commission of Pakistan
HRD	Human Rights Defender
ICCPR	International Covenant on Civil and Political Rights
ICNL	International Centre for Not-for-Profit Law
IJI	Islami Jamhoori Ittehad
INGO	International Non-Government Organisations
INSAF	Indian Social Action Forum
IP	Indigenous People
IPC	Indian Penal Code
ISIS	Islamic State of Iraq and Syria
IT Act	Income Tax Act
JCC	Jamia Coordination Committee
JNU	Jawaharlal Nehru University
JUI-F	Jamiat Ulema-e Islam—Fazl
JVP	Janatha Vimukthi Peramuna
LGBTIQ+	Lesbian, Gay, Bisexual, Transgender, Intersex, and Questioning
LTTE	Liberation Tigers of Tamil Eelam
MML	Mass Media Law
MoEC	Ministry of Economy of Afghanistan
NCEASL	National Christian Evangelical Alliance of Sri Lanka
NCM	National Commission for Minorities
NDA	National Directive Act
NDS	Afghan Intelligence Agency
NEFIN	Nepal Federation of Indigenous Nationalities
NGO	Non-Governmental Organisations
NHRC	National Human Rights Commission
NRC	National Register of Citizens
NRIC	National Register of Indian Citizens

*Abbreviations and Acronyms*

NSA	National Security Act
NSC	National Security Council
NUG	National Unity Government
NWAB	National Women's Association of Bhutan
OHCHR	Office of the United Nations High Commissioner for Human Rights
OMP	Office on Missing Persons
PCP	Pakistan Centre for Philanthropy
PFI	Popular Front of India
PIL	Public Interest Litigation
PSA	Public Safety Act
PSO	Public Security Ordinance
PTA	Prevention of Terrorism Act
PTI	Pakistan Tehreek-e-Insaf
PTM	Pashtun Tahafuz Movement
RO	Religious Organisation
RSF	Reporters Sans Frontier
RSPN	Royal Society for Protection of Nature
RSS	Rashtriya Swayamsevak Sangh
RTI	Right to Information
SC	Supreme Court
SECP	Securities Exchange Commission of Pakistan
SLPP	Sri Lanka Podujana Peramuna
SSNCC	Social Services National Coordination Committee
SWC	Social Welfare Council
TLP	Tehreek-e-Labbaik Party
TNA	Tamil National Alliance
TNPF	Tamil National People's Front
UAPA	Unlawful Activities (Prevention) Act
UDHR	Universal Declaration of Human Rights
UN-CAT	United Nations Committee against Torture
UNDP	United Nations Development Programme
UP	Uttar Pradesh
UPDF	United People's Democratic Front
UPR	Universal Periodic Review
USCIRF	United States Commission for Religious Freedom
WHO	World Health Organisation



## Introduction

# South Asia, Constrained

*People Power Under Attack 2019*, the most recent report by the civil society alliance CIVICUS, observed that civil society is ‘under attack’ in most countries around the world. This, the report noted, has resulted in a situation where only 3 per cent of the world’s population are now living in countries where their fundamental freedoms of expression, association and peaceful assembly are in general, protected and respected. In South Asia, home to around a quarter of humanity, four countries—Bhutan, the Maldives, Nepal and Sri Lanka—are graded as countries with ‘obstructed’ civic space, while India has recently joined Afghanistan, Bangladesh and Pakistan among the ranks of the world’s ‘repressed’ countries, CIVICUS’ second-lowest grade. In other words, 97 per cent of South Asia’s 1.85 billion inhabitants now live in conditions where civic space is ‘significantly constrained’ and civil society members who question those in power risk ‘surveillance, harassment, intimidation, imprisonment, injury and death’.

While the repression of civic space has increasingly been recognised as a growing global issue, such restrictions are not new to minorities—religious, linguistic, ethnic, sexual—and to those who advocate for minority rights. For them, the ramifications of these restrictions tend to be particularly severe and take place with greater frequency. The impact of shrinking civic space can also be seen through restrictions on freedom of religion or belief. As outlined by the Special Rapporteur on Freedom of Religion or Belief, Ahmed Shaheed, states have the ‘propensity for imposing very tight restrictions on the legal status, funding, autonomy and political activities of religious actors and institutions for the purposes of limiting the role of religion, generally, in public and, at times, private life’. In this way, the treatment of minorities, and

of those who advocate for their rights, are critical indicators of the state of democracy. In South Asia, too, a region that has historically witnessed the systemic marginalisation of minorities and majoritarian impulses have recently been on a renewed ascendancy, minorities have been bearing the brunt of the shrinking of civic space. Across the region, those advocating for minority and human rights have been increasingly facing pushback from state and non-state actors. Such challenges are often further exacerbated for those who face intersectional discrimination, for whom multiple forms of oppression operate alongside one another such as minority and indigenous women. In her report on the criminalisation of indigenous human rights defenders in 2018, Special Rapporteur on the rights of indigenous peoples, Victoria Tauli-Corpuz, pointed to the specific ‘gendered impacts’ that indigenous women human rights defenders who are criminalised face, including defamation.

This report, *South Asia State of Minorities 2020: Minorities and Shrinking Civic Space*, seeks to highlight the state of civic space across the region, and in particular the challenges faced by those engaged in the advocacy of minority rights.

## **Definitions, Research Design and Reporting**

### **Civic Space and Civil Society**

According to the Office of the United Nations High Commissioner for Human Rights, ‘civic space’ is ‘the environment that enables civil society to play a role in the political, economic and social life of our societies. In particular, civic space allows individuals and groups to contribute to policy-making that affects their lives, including by: accessing information; engaging in dialogue; expressing dissent or disagreement; and joining together to express their views.’ Conceptually, civic space or the public sphere<sup>1</sup> is constructed by agencies, events, political reforms or interactions between state and citizens and the market, all loosely called civil society. They

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<sup>1</sup> As defined by Habermas. See: Jurgen Habermas, *The Structural Transformation of the Public Sphere: an Inquiry Into a Category of Bourgeois Society*, trans. Thomas Burger and Frederick Lawrence (Cambridge: Polity Press, 1989).

can emerge through various routes and under various conditions. Historically, they have been created largely through resistance and struggles.

Civic space rights are guaranteed by the International Covenant on Civil and Political Rights (ICCPR)—contained in Article 19 (everyone shall have the right to freedom of expression), Article 21 (right to peaceful assembly), and Article 22 (right to freedom of association with others). These ‘basic freedoms’ rights are fundamental for citizens and civil society organisations to be able to claim their rights and influence the political and social structures around them. While there are numerous other factors that influence the effective functioning of civil society, it is these three freedoms that provide the foundation for civil society advocacy.

The right to the freedom of expression has been defined as including:

...the right to access information, critically evaluate and speak out against the policies and actions of state and non-state actors, and publicly draw attention to and carry out advocacy actions to promote shared concerns, without fear of retribution from any quarter.<sup>2</sup>

The right to the freedom of peaceful assembly has been defined as:

...the right of citizens to gather publicly or privately and collectively express, promote, pursue and defend common interests. This right includes the right to participate in peaceful assemblies, meetings, protests, strikes, sit-ins, demonstrations and other temporary gatherings for a specific purpose.<sup>3</sup>

The right to the freedom of association has been defined as:

...the right of any citizen to join a formal or informal group to take collective action. This right includes the right to form

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<sup>2</sup> ‘What is Civic Space?’ CIVICUS, accessed 30 September, 2020, <https://monitor.civicus.org/whatis-civicspace/>.

<sup>3</sup> *Ibid.*

a new group and join an existing group. Associations can include civil society organisations, clubs, cooperatives, non-governmental organisations, religious associations, political parties, trade unions, foundations and online associations, as well as less defined and new forms of groups such as social movements. There is no requirement that the association be registered in order for the right of the freedom of association to apply. Under the right to the freedom of association, groups have the right to access funding and resources.<sup>4</sup>

The civic space rights and attacks on them, will be the focus of our attention, as we explore the narrowing civic space in South Asia, especially for its minorities. Our focus has been the past three-four years, although specific country accounts draw on development over the longer term.

**Research Design: Questions, Methodology and Data Collection**

This report on the shrinking civic space in South Asia and its minorities, seeks to:

- a. identify emerging trends concerning civic space in each country in South Asia, and regionally, as a whole;
- b. analyse the factors driving the trends, and examine how constitutional and legal safeguards in each country have withstood the changes; and
- c. document the impacts of these trends, with specific reference to minorities and those involved in minority rights advocacy.

All the country studies employed a qualitative research methodology, to document changes over time and space, drawing out patterns and trends, also understanding impact. The research relied mostly on secondary material, reviewing media reports, civil society fact findings, assessments and round-ups, and official documents available in the public domain. Interviews with key respondents and a review of legal documents were undertaken as well, making

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<sup>4</sup> Ibid.

up the bulk of the primary research. A separate online opinion survey conducted in some of the countries added to the analytical material. Coronavirus-related risks and movement restrictions prevented more reliance on primary material—which remains a limitation of the report.

### **Structure of the Report**

The rest of this introductory chapter of the report is structured as follows. The next section presents our key findings on civic space restrictions in South Asia as a whole, using a regional lens, reporting trends on each of the three civic space rights, and their specific implications for minorities, also in the context of Covid-19. This is followed by summaries of the civic space situation by country, for Afghanistan, Bhutan, Bangladesh, India, Pakistan and Sri Lanka along with a set of recommendations from a regional perspective. This chapter is followed by seven separate country chapters, providing more granular accounts of civic space restrictions in each, the implications of that for their respective minorities, each followed by country specific recommendations.

### **Civic Space in South Asia: Key Findings**

Democratic development has historically been limited in South Asia. India and Sri Lanka have enjoyed electoral democracy since their emergence as sovereign nations—although punctuated by prolonged civil wars, creating ‘zones of exceptions’. Citizens of other South Asian countries have experienced constitutional monarchies, military dictatorships, and civil wars, along with spells of popular governments. This has resulted in civil society being historically constrained across much of the region. All South Asian countries have since the turn of the century seen developments that served as major turning points in the course of their civic space trajectories: In **Afghanistan**, the collapse of the Taliban regime in 2001 and the enactment of the Constitution of 2004 created the space for the emergence of civil society. However, the assumption of power by the Ashraf Ghani-led National Unity Government and the disbanding of the International Security Assistance Force (ISAF), both in 2014, have been followed by the

imposition of severe restrictions on civic space. In **Bhutan**, a monarchy, the enactment of a modern Constitution in 2008 created for the first time an opening for civic space and guaranteed civil liberties to its citizens. But the space for civic action—particularly regarding political and religious freedoms—has continued to be heavily constrained. **Bangladesh** saw the return of electoral democracy in 2009 after a brief period of military interference. The concentration of power with the Awami League after the 2014 elections—boycotted by the country’s principal opposition parties—has, however, resulted in a steady deterioration of civil and political rights. The most alarming recent example of democratic backsliding has been in **India**, where the rise to power of the Hindu nationalist Bharatiya Janata Party (BJP) after general elections in 2014 has led to the hardening of authoritarian tendencies and a historically vibrant civil society has come under sustained attack, with grave implications for its minorities. The re-election of the BJP in 2019 has intensified this trend, most notably in the highly militarised Indian-administered **Kashmir**, where civic space has now been almost completely erased after the revocation of the region’s limited autonomy in August 2019. In **Nepal**, civil society played a critical role in the dismantling of the Hindu monarchy and the establishment of a democratic republic in 2008. But since around 2010, there have been sustained efforts to curtail civic space. In **Pakistan**, despite an unprecedented two successive peaceful transfers of power in 2013 and 2018, the military continues to wield influence in key civilian matters, limiting the scope for civic action. In **Sri Lanka**, where civic space has been precarious due to its history of violent ethnic conflict that ended in 2009, two recent events have narrowed the scope for civic action: the Easter Sunday terror attacks and the resultant declaration of Emergency, and the assumption of power by President Gotabaya Rajapaksa, both in 2019.

Across the region, these developments have been followed by precipitous changes in the scope for enjoyment of the three basic freedoms, despite domestic and international recognition of these rights as fundamental. Simultaneous to this creation of a hostile environment for the functioning of civil society—particularly

for minority rights-focused actors—violence and other forms of targeting against minorities have also seen a spike, in a region that is increasingly beset by rising majoritarianism. The onset of the Covid-19 pandemic has provided further impetus to many governments across the region to extend their stranglehold over civil society.

How does South Asia perform on each civic space right? And what of its minorities?

### **Recent Trends Concerning Freedom of Expression**

Attempts to silence critical and dissenting voices have been observed in each country in South Asia, by both state and non-state actors. This has taken the form of threats and harassment, physical attacks, doctored prosecution, and incarceration. New provisions and legislations restricting the space for free expression have also been rolled out in several countries in recent years, adding to a host of draconian measures already in place. Restrictions on the access to the internet were reported from across the region, as was the ever-present phenomenon of state surveillance.

Physical attacks on media personnel have been reported from each country. In just the first nine months of 2020, killings of journalists were reported from Afghanistan, India and Pakistan, all of whom are among the worst performers in international indices of press freedom. Indian-administered Kashmir, for instance, has been perilous for journalists in recent years, with several instances of physical attacks, including by security forces, assassinations of prominent media voices, and fabricated prosecution of critical journalists, invoking draconian anti-terror and preventive detention provisions too. Other parts of India too have witnessed such media hounding, most recently under the cover of the Covid-19 lockdown.

In 2015, murder campaigns of high-profile critics of the dominant ideology were reported from both India and Bangladesh, where adherents of Hindutva and Islamism, respectively, have been enjoying a growing level of impunity. Pakistan, too, has witnessed high-profile assassinations in recent years, of voices that have been known to be critical of the country's powerful military

establishment. In Afghanistan, clauses upholding Islam in the Mass Media Law of 2009—which sought to institutionalise freedom of expression in the country—have been weaponised and misused by the state, leading to instances of journalists being charged with blasphemy. Blasphemy laws have continued to be weaponised in Pakistan as well, and to a lesser degree in Bangladesh.

Two recent examples of states imposing extremely restrictive provisions upon the media—and dissenting voices in general—were observed in Indian-administered Kashmir and in Sri Lanka. A prolonged, blanket communications blockade—the longest ever observed in any democratic set-up—was imposed in Kashmir after the revocation of autonomy in August 2019. Later, a highly restrictive Media Policy was announced for the region, allowing authorities to control what content could be published and who could be empanelled as a journalist. And in Sri Lanka, the promulgation of Emergency Regulations after the Easter Sunday bombings of 2019 resulted in the imposition of several provisions restricting the freedom of expression, including on the possession and publication of material deemed detrimental to national security.

Some other recent examples of the enforcement of restrictive provisions related to free expression included Bangladesh’s Digital Security Act of 2018, under which anyone can be penalised for propagating online content deemed to be false, provocative or sensitive, and Nepal’s updated Criminal Code of 2018, which stipulates that journalists could be fined or imprisoned for publishing ‘confidential information’. In Bhutan, the Media Council established in 2018 has begun monitoring ‘offensive’ and ‘harmful’ content.

India and Pakistan both witnessed recent instances of prominent television channels critical of powerful establishment interests being temporarily being taken off the air. Given that government advertisements account for a substantial chunk of media houses’ revenues throughout South Asia, the press across the region is highly susceptible to governments exercising implicit control over content published or broadcast. Instances of surveillance of journalists were also reported from across South Asia. Self-

ensorship is, therefore, the norm in many countries. Social media and other online spaces, though more open than other public avenues, have also come increasingly under state scrutiny in each country. Internet shutdowns have also become common, most notably in India, which has emerged as the world leader in cutting off access to internet services in order to quell free expression and as a tool to silence dissent. Academic freedom has also come under attack, with recent instances of liberal and progressive academic figures in India and Pakistan facing intimidation, incarceration and violent attacks at the hands of both state and non-state actors.

### **Recent Trends Concerning Freedom of Peaceful Assembly**

The right to peaceful assembly continues to be violated across South Asia, with security forces in several countries resorting to the deliberate use of violent means to target protesters, leading to deaths in many cases. There have also been other legislative and executive efforts in many countries to enforce further restrictions on peaceful gatherings, even before the lockdowns put in place across the region due to the Covid-19 pandemic.

Some of the most recent examples of peaceful protesters being met with excessive force were in India, where protesters against the recent changes to its citizenship law were killed in police action in the states of Assam and Uttar Pradesh in 2019, and protesters seeking self-determination were killed in Kashmir. The right to peaceful assembly in Kashmir has become virtually non-existent, where authorities continue to impose regular curfews and lockdowns. ‘Pellet firing shotguns’ and other ‘less lethal’ and ‘lethal’ weapons continue to be used with impunity against civilians in Kashmir. Pakistan and Afghanistan, too, have in recent years witnessed instances of security forces opening fire at peaceful protesters. Protesters in many countries have also come under attack by non-state actors, mainly by religious extremists.

In Sri Lanka, the Emergency Regulations empowered the President to prohibit public processions and meetings likely to disturb public order or promote disaffections. Similar provisions exist in India, Pakistan and Bangladesh—all arising from Section 144 of the same colonial-era Criminal Procedure Code—and continue

to be routinely abused, most recently and profusely across several locations in India, including Kashmir. In Afghanistan, a move is afoot to rehaul its Assembly Law, which could seriously restrict the right to organise and participate in gatherings, protests and demonstrations.

### **Recent Trends Concerning Freedom of Association**

Across South Asia, the legal environment for the functioning of civil society has become increasingly hostile, despite the presence of constitutional guarantees of the right to association. Restricting access to foreign funds has continued to be a key tool to stifle civil society, and alleged proselytisation remains a particularly sensitive topic for governments across the region.

In almost every country, there have been moves in recent years that hamper the freedom of association. In 2017, Afghanistan sought to introduce restrictions that could require all NGOs to re-register themselves every three years. India, in 2020, enacted changes in its tax laws that will have similar effects on NGOs, albeit every five years. In Bhutan, the fear of revocation of registration certificates—which have to be renewed annually, according to the CSO Act of 2007—has resulted in CSOs opting to completely refrain from advocacy on political issues. In Bangladesh, a government circular issued in 2019 threatened to cancel the registration certificates of NGOs that used the words ‘adivasi’ or ‘indigenous’ in their name. In other countries too, CSOs continued to be subject to extensive and often arbitrary regulations, with complex procedures for registration, security clearance, and gaining approvals for funding.

Foreign funding of civil society actors seems to be a particularly sore point. Recent examples of governments moving to choke the access of NGOs to foreign funds included Bangladesh’s Foreign Donation (Voluntary Activities) Regulation in 2016, and India’s Foreign Contribution (Regulation) Act (FCRA) in 2010. Restrictive clauses to FCRA introduced by the previous Congress-led government in 2010 have since been further tightened and weaponised by the BJP-led government, resulting in a situation where access to foreign funds is subject to periodic license renewals, caps on how the funds can be used, and, among other

things, an undertaking not to engage in religious conversions. A further amendment earlier in September 2020 has made it even more difficult for groups to pursue human and minority rights work. Despite freedom of conscience and faith guaranteed in most South Asian constitutions, religious conversion remained a touchy subject in other countries as well, including Nepal and Bhutan, where proselytisation is banned and NGOs receiving foreign funds are not allowed to engage in religious activities. In an alarming move, in 2019, Nepal's International Development Cooperation Policy directed foreign NGOs to fund development work instead of religious and political institutions.

### **Minority and Human Rights Defenders**

Across South Asia, the recent resurgence of majoritarianism—in different forms and degrees in different countries—has been a central reason behind the rapid shrinking of civic space. Accordingly, the ramifications have been direst for the region's religious, ethnic, caste, gender and sexual minorities, who have all historically faced various kinds of subjugation and discrimination, and also for those who have advocated for their rights.

**Christians** have faced violent attacks in all South Asian countries, with the most notable recent example being coordinated suicide bombings of churches in Sri Lanka in 2019. Elsewhere, sporadic instances of violence against Christians continue to be reported, often under the cover of legislation in place in many countries that restrict proselytisation. **Hindus** have faced discrimination and violent attacks in Afghanistan, Bangladesh and Pakistan, all of which constitutionally privilege Islam as the state religion. **Dalits**, too, have faced caste discrimination wherever they are present, including and particularly in the Hindu-majority nations of India and Nepal. **Muslims** have increasingly come under attack in India, in the form of both hate crimes and state-led discriminatory measures, including legislations and policies. Muslims in Indian-administered Kashmir have also come under renewed, state-led attack and a complete erasure of civil and political rights. Muslims have suffered resurgent attacks and surveillance in Sri Lanka as well in recent years. In just the last two

years, both Sri Lanka and India witnessed major anti-Muslim riots in which state security forces were allegedly complicit, in May 2019 and February 2020 respectively. At the same time, Muslim micro-minorities such as **Shias** have faced frequent and severe attacks in Pakistan and Afghanistan, as have **Ahmadiyahs**, who are constitutionally discriminated against in Pakistan.

The space for minorities to advocate for their rights remained constricted across much of South Asia due to the constant fear of violence and other forms of targeting by state and non-state actors. Across the region, there have been innumerable instances of attacks, harassment, prosecution, abductions, and murder of minority and human rights defenders. The targeting of rights defenders has also taken the form of the malicious invocation of stringent national security laws that are in place in every country. Defamation, sedition, anti-terror and blasphemy laws have been frequently misused to target rights defenders. Several countries have also recently observed increased and sustained militarisation, with military and intelligence forces keeping particularly close tabs on human rights activism. It is common for intelligence agencies to use intimidatory techniques against human rights defenders, particularly in Indian-administered Kashmir, Pakistan and Sri Lanka.

#### **Further Shrinking of Civic Space during the Covid-19 Pandemic**

Civic space in South Asia has come under renewed stress during the Covid-19 pandemic, with all countries in the region imposing measures that have resulted in the further erosion of basic freedoms, raising fears that shrinking civic space may end up being further entrenched in the region. Restrictions on movement and assembly were put in place in each country in the form of lockdowns. The lockdowns varied in geographical spread, severity and duration across the region, with India's 68-day nationwide lockdown being described as among the world's most stringent. India saw several instances of lockdown violators being assaulted by security forces.

While no country in South Asia declared a formal state of emergency, the cover of the pandemic was used by multiple governments to impose fresh restrictions on expression, association and assembly. India was the most systematic suppresser of free

expression, with dozens of reports from across the country of journalists being harassed, threatened, assaulted, arrested and prosecuted for their coverage of the government's handling of the pandemic. Arrests for allegedly publishing false information about Covid-19 were also reported from Sri Lanka.

The Indian government also used the Covid-19 lockdown to dismantle protest sites that had come up in opposition to the Citizenship (Amendment) Act (CAA) of 2019, and later began a campaign of arresting and criminalising prominent anti-CAA protesters and activists, mostly Muslims, accusing them of instigating the February 2020 riots in Delhi.

## **Summary of Country Chapters**

### **Afghanistan**

Civil society emerged after the collapse of the Taliban regime, and was able to function under the Constitution of 2004. Along with a commitment to form civil society void of oppression, the constitution of Afghanistan has forbidden 'any kind of discrimination and distinction between citizens of Afghanistan'. In practice, however, the civic environment remains highly precarious for human rights defenders (HRDs) in the country. The civic spaces in Afghanistan have been gradually repressed since 2014. The HRDs, civil society activists, and journalists are constantly exposed to growing threats, harassment, intimidation, detention, and killings by both state and non-state actors.

### ***Constitutional Context***

Afghanistan's 2004 Constitution provides citizens the right to form associations and freely express their thoughts and opinions through different means of publication. In practice though the situation is different for while the constitution requires the government to observe all the international treaties and charters to which Afghanistan is a state party, on the other hand, it resists any law that 'contravenes the tenets and provisions of the holy religion of Islam', a general and ambiguous legal phrase, creating leeway for exploitative interpretation.

### ***Mass Media Law***

From limited or no media outlets prior to 2001, the country now has hundreds of private radio and television stations and a panoply of magazines and newspapers circulating on a regular basis. The new media outlets play an increasingly critical role in Afghanistan, including facilitating public debate and shaping public opinion on the country's different aspects of life.

In 2009, the Afghan parliament approved the Mass Media Law, which while a promising step toward consolidating freedom of expression, still contains clauses that require the upholding of Islam. And with an increasing deterioration in the security situation over the last decade, Afghanistan has become a very dangerous country for journalists, leading to self-censorship in the media.

In 2017, the Afghan government attempted to add some restrictive provisions towards NGOs, which had it been passed by the parliament would have required all NGOs to re-register every three years. The government could refuse to register an organisation for 'technical reasons', and, when holding their annual General Assembly, CSOs would have been required to invite a government representative as well.

### ***Access to Information Law***

The enactment of the Access to Information Law (AIL) in 2018 is a promising step forward, but implementation is lacking. The AIL, however, is the first legislative move of its kind in the country. Pursuant to this law, state institutions are required to make information available to the applicants and the general public. Yet, the government's 'severe' restriction on state-owned information has and continues to be a problem.

Placing restrictions on social media such as Telegram and WhatsApp messaging services and re-drafting the Assembly Law and NGOs law are all deliberate attempts made by the government to close civic spaces for CSOs.

### ***The Law on Gatherings, Strikes, and Demonstrations***

Afghanistan's Constitution protects the right of citizens to freedom of assembly and association to peacefully express their demands

and concerns, but in practice security forces have deliberately targeted protesters, including wounding and killing many. The Assembly Law also places significant restrictions on gatherings, protests, and demonstrations in Afghanistan, which is a serious concern for HRDs. Under the Afghan Police Law, when a suspect does not comply with police warnings, the police can resort to force by shooting at the suspect. A new draft of the Assembly Law, though not yet passed by the Afghan parliament, has many restrictive provisions, including the use of military equipment, gigantic containers for blocking the roads, to physical assault, arrests, and deliberate shootings of protesters.

#### ***Economic Environment for CSOs***

Post-2014 reduction in foreign aid has severely impacted the sustainability of the majority of CSOs operating in the country. In addition, heavy taxation on the media has crippled a large number of TV stations, radio airwaves and print media, mostly based in the provinces of Afghanistan.

While CSOs play a crucial watchdog role in informing citizens about their rights and entitlement and improving service delivery and development projects, the financial crisis facing CSOs was exacerbated by the Covid-19 pandemic. As a result, low-income CSOs with little support from the government and international community are now at the brink of collapse.

#### ***Political Environment for CSOs***

According to several human rights reports, the political environment for civil and human rights activists has been unfavourable for the last two decades. According to Afghan journalists, freedom of the press and expression are on a ‘downward spiral’, with increasing intimidation and violence from both state and non-state actors, lack of support from the Afghan government, and waning international assistance.

#### ***Security Environment for CSOs***

Overall, lack of security as constant threats, intimidation, harassment, killing, kidnapping, and other forms of violence are

the most common trends that HRDs, especially women human rights activists, have been facing in Afghanistan. Death threats are commonplace as well.

In 2016, President Ashraf Ghani promised to protect HRDs and civil society activists by putting this as the 'sole responsibility' of his government. However, the government itself has been responsible for threats, intimidation, and harassment of human rights activists.

The U.S.-Taliban agreement in Qatar in early 2020 set the terms for the US military's withdrawal from Afghanistan and for negotiations between the Taliban and the Kabul government towards a political settlement. Nevertheless, CSOs, HRDs and Afghan minority groups are concerned about the decline in civic space and the loss of gains made over the past two decades as a result of the peace process and the arrival of the Taliban.

### **Bangladesh**

Apart from the allegations of extrajudicial killings, arbitrary arrests and enforced disappearances, the government has over the last two decades introduced controversial legal measures, many provisions of which limit civic space, such as the Information and Communication Technology Act 2006, the Digital Security Act 2018, and the Foreign Donation Regulation Act 2016. There are examples in the recent past where the law has been applied from a political outlook - with oppositional political views, journalistic reports critical of the government, or rights activism targeted. Because of the appointment procedure, judicial independence, too, appears undercut by the executive organ of the state.

The environment is adverse for CSOs and HRDs. Civil and political rights in Bangladesh are deteriorating due to the absence of strong opposition political parties and absolute power being wielded by the present ruling party. In fact, the shrinking of civic space can be traced to the national election of 2014 that brought the party to power.

### ***Religious Minorities***

Bangladesh experienced regimes led by non-elected military government for years and the military junta often use religion to

stay in power. While secularism was erased from the constitution in 1977 by the military government, Islam was declared as the state religion in the constitution in 1988 by another military ruler. In 2015, the Bangladeshi Supreme Court rejected a petition challenging Islam's status as the state religion.

Political parties use religiously divisive language and, on occasion, act in ways that exacerbate rather than diminish religious and communal tensions. Violent assaults on religious minority communities are often not investigated or prosecuted.

Heiner Bielefeldt, Special Rapporteur on freedom of religion or belief, mentioned in his preliminary findings that disputed property is one of the issues of violence against religious minorities. The Vested Property Act, 1972 was turned to Vested Property (Return) Act in 2001 and then Vested Property Return (Amendment) Act in 2011. The Act has the provision to file claims by affected individuals to reclaim their confiscated property. But the trial process was so slow that, according to a government report, 88,882 cases were pending with the Vested Property Return Tribunal and the Appellate Tribunal regarding disputes over nearly 10 million acres (c. 4 million hectares) of land. Different sources report continuous grabbing of Adivasi and religious minorities' land, including houses and places of worship. Such incidents are often preceded by violence to evict the families from the land and properties.

### ***Dalits and Excluded Groups***

Though the reality of caste discrimination in Bangladesh is concealed by silence, even outright denial, the Dalit community experiences multiple forms of social, political and economic discrimination. Their predicament, enabled by the tacit acceptance of the government, is in violation of Bangladesh's fundamental human rights obligations. Though recognised as citizens of the country, Dalits' continued stigmatisation on account of their caste and professional identity can leave them in a situation of de facto statelessness.

In April 2018, the National Human Right Commission sent the draft of the Elimination of Discrimination Act, three years after the

Law Commission's recommendations. However, it has remained under review, causing frustration among the stakeholders.

### ***Status of Indigenous People***

The indigenous peoples (IPs) of Bangladesh are not constitutionally recognised. Through the 15th Amendment to the Constitution in 2011, the Government chose to term indigenous peoples as 'tribes, minor races, ethnic sects and communities'. About 54 IPs, speaking more than 35 languages live in Bangladesh, yet, Bangladesh abstained from voting for the UN Declaration on the Rights of Indigenous Peoples in 2007.

The IPs in the country engaged in defending civic rights and promoting democratic norms live in constant fear and insecurity. Incidents like enforced disappearance, unlawful killings, arbitrary arrest, harassment, and framing them in false and fabricated cases, restriction on freedom of speech and right to assembly take place on a regular basis.

In December 2019, the government's Bureau of NGO Affairs (under the office of Prime Minister) published a circular informing the NGOs with 'adivasi' or 'indigenous' in their official name to change it within a month. Failure to comply would lead to the revocation of their registration.

### ***Sexual Minorities***

Homosexuality in Bangladesh is prohibited. There are explicitly discriminatory laws—Section 377 of the Penal Code criminalises 'carnal intercourse against the order of nature'. The Government of Bangladesh opposed the idea of providing rights to gender diverse communities, stating that it is not a generally accepted norm of the country.

### ***Rights of Urdu-speaking People***

Following a High Court decision in 2008, Urdu-speaking people, or Biharis, have been recognised as citizens of Bangladesh and entitled to National Identity Cards and voting rights. They still faced discrimination in different aspects of life such as getting a passport, public service employment, and trade licences. Their

camps are always under threat of eviction. The Urdu-speaking community does not yet have state recognition as a linguistic minority of Bangladesh.

### ***Digital Security Act***

Freedom of speech and expression is being trampled upon in Bangladesh, particularly with the Digital Security Act 2018. Under this Act, intentionally posting false, provocative, indecent or sensitive information on websites or any electronic platforms that is defamatory, and is construed as disrupting the country's law and order situation, or harming religious sentiments, is a punishable offence. Since the Act allows a third party to file a case against any person, updating a status on social media, writing a blog, or running a news portal could be found to be in violation of the DSA. The Act has been routinely used to suppress freedom of speech and harass writers, activists, and journalists—often for their feedback on social media.

### **Bhutan**

The Constitution of the Kingdom of Bhutan 2008 guarantees the rights of citizens to civil liberties. The Constitution allows freedom of expression, association and the right to follow one's religion. The media has developed sporadically after 2008 with several new newspapers and radio stations. Formal civil society has begun developing with the enactment of the Civil Society Organisations (CSO) Act in 2007.

There are currently 51 CSOs in Bhutan. However, there are no CSOs with the mandate to protect minority rights or even human rights. Organisations promoting the interests of certain religious groups are registered under the Religious Organisations Act. Hence, minority issues do not receive any attention and even when issues rise in the public domain, there are no civil society groups that can effectively take up and advocate on the issues.

Over the years, CSOs have faced several constraints due to legislation which deters CSOs from taking up certain activities. For example, the CSO Act is silent about the advocacy function and role of CSOs. Moreover, any advocacy taken up by CSOs may

be construed as a 'political' activity, which is not permitted. This lack of clarity has meant that CSOs are reluctant to engage in advocacy for fear of having their registration certificates revoked. Certificates are renewable each year after payment of a fee. In recent times, CSOs have engaged in advocacy of 'safe' issues such as against domestic violence, support for people living with HIV/AIDS, people dependent on drugs and alcohol, the environment, women's issues, LGBTIQ+, among others.

Although there are multiple media houses all are dependent on government for advertising revenue, resulting in a high degree of self-censorship in the media. Critics are also silenced by the powerful who invoke defamation laws. A Media Council too has been established, which among others, monitors offensive and harmful content. However, there are fears that the Council will erode freedom and induce greater self-censorship. Further, under the National Security Act, speech that creates or attempts to create 'hatred and disaffection among the people' or 'misunderstanding or hostility between the government and people', among other offences, can be punished with imprisonment.

As a fundamental right, the Constitution guarantees citizens the right to freedom of thought, conscience and religion and that no person shall be compelled to belong to another faith by means of coercion or inducement. The Religious Organisations Act of Bhutan 2007 reinforces this right, in effect banning proselytisation.

There have been reports of Christians being harassed and deprived of state benefits such as government-subsidised agricultural inputs, especially in rural areas. They have also not been allotted burial grounds. Christians have been denied registration as a religious organisation. Despite this, the response of Christians in asserting their rights as a movement has been largely absent. This is probably due to the small number of Christians in the country, and the fragmented nature of organisation among Christians of different denominations and prohibition of dissent.

## **India**

The rights (i) to associate, (ii) assemble peacefully and (iii) freely express views and opinions are guaranteed by the Indian

Constitution, subject to ‘reasonable restrictions’. India’s civil society actors have, however, increasingly been under attack, particularly since the assumption of power by the Bharatiya Janata Party (BJP) in 2019. The situation escalated in 2019, when the BJP was re-elected despite its previous assaults on civil liberties and its heightened targeting of minorities.

### ***Narrowing Civic Space in India***

The regulatory regime for CSOs in India is disproportionate and discriminatory. Of particular concern to most CSOs, is the Foreign Contribution Registration Act (FCRA) which regulates the terms and conditions on which CSOs can receive foreign funding. The law, first introduced in 1979 and amended in 2010 by the previous Congress-led government, requires CSOs to seek renewal every five years of their licences to receive foreign funding. The law also places a cap—lowered significantly in September 2020—on the proportion of foreign funds that can be used for administrative expenses, essentially allowing the state to control how NGOs spend their money.

BJP rule has been characterised by the open targeting of several high-profile NGOs, with foreign funding freezes being the weapon of choice. In 2019, the BJP government further tightened the FCRA rules, requiring individual office bearers of NGOs to declare once every five years that they had not been prosecuted or convicted for promoting religious conversions, and that they were not likely to engage in ‘propagating sedition’.

A new tool for administrative harassment is the introduction in 2020 of new regulations making NGO registration under the Income Tax Act non-permanent—which means NGOs must seek registration every five years. The BJP government has also used India’s enforcement agencies 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 especially high-profile NGOs. Along with attempts to prevent groups working on critical issues, human rights defenders have also reported being subject to threats and intimidation by state agencies and ideological groups aligned to them.

The space for free expression has also narrowed under BJP rule. A recent report revealed that just during the national Covid-19 lockdown between 25 March and 31 May 2020, at least 55 Indian journalists faced arrest, physical assaults, destruction of property, threats or registration of FIRs. On 13 May, the Editors Guild of India condemned a ‘growing pattern of misuse of criminal laws to intimidate journalists in different parts of the country’.

Access to information has also been affected, with the Delhi-based Software Freedom Law Centre reporting that India has seen a dramatic rise in yearly internet shutdowns, from six in 2014 to 106 in 2019. The Indian government has reportedly submitted the most number of content takedown requests to social media platforms, and at least 50 people—mostly Muslims—were arrested for social media posts in just 2017 and 2018 alone.

Instances of censorship of TV news channels have also come to light, with bans on channels that broadcast views critical of the government. There have not been any instances of similar actions being taken against pro-BJP channels that regularly broadcast hateful content.

Universities, especially those that have a reputation for fostering enquiry and independence, have also been targeted. This has coincided with the continuing rise of the RSS’ student wing, the Akhil Bharatiya Vidyarthi Parishad (ABVP), which has often unleashed violence in university campuses. Beyond such overt targeting, there has also been a concerted effort to starve India’s traditionally left-leaning public universities of funds.

India has several ordinary laws and provisions that have historically allowed governments in power to crack down on dissent. They sit along with constitutional rights of free expression, association and peaceful assembly, which courts have interpreted as all being subject to ‘reasonable restrictions’. Observers say that, although no new laws have been enacted, there is now a greater inclination towards the abuse of existing ones. Since 2014, India has seen several examples of the state—particularly in provinces where the BJP is in power, or where the BJP has control over police forces—cracking down on peaceful protests, including protests by Dalits over lynching.

Draconian laws have often been deployed by authorities against dissidents and human rights workers, most notably the Unlawful Activities Prevention Act (UAPA) and the National Security Act (NSA). UAPA—India’s principal anti-terror law—is seen as government’s go-to tool in its quest to ‘exterminate both dissent and dissenters’. An amendment to the law in 2019 gives the state the authority to declare individuals as terrorists and seize their properties even before their guilt had been established by a court of law. UAPA provisions have been invoked to detain dissenters protesting against anti-Dalit and Adivasi atrocities, as well as the CAA, among others, often just for making peaceful speeches.

***The Closing of Civic Space for Minorities***

If civic space has been narrowing for the country as a whole, for religious minorities—especially for India’s Muslims and those working with them—it is effectively closed. Part of the problem historically has been the poor policy focus for ‘Muslim’ outcomes, even though there is enough evidence to show poor performance on all counts of development. Muslim representation has always been poor—from the Parliament, the bureaucracy, and Supreme Court to the boards of top corporations, banks, public sector enterprises, as well as media houses.

Hate crimes against minorities have seen a spike—taking the form of mob lynching and vigilante violence against Muslims, Christians and Dalits. The BJP also strengthened and expanded a series of discriminatory laws and measures that target religious minorities. These include anti-conversion laws blamed for empowering Hindutva groups to ‘conduct campaigns of harassment, social exclusion and violence against Christians, Muslims, and other religious minorities across the country’. Laws ostensibly meant for the protection of cows continue to provide institutional backing for similar campaigns against Muslims and Dalits. In Assam, the publication of the draft National Register of Citizens in July 2018—through an administrative process rife with discriminatory procedures and practices, aimed at weeding out ‘foreigners’—left over 4 million persons facing

the possibility of mass disenfranchisement. Muslims were feared to be the principal victims. The situation has exacerbated significantly since BJP returned to power with a 'brute majority' in May 2019.

In December 2019, an amendment in the Citizenship Act was passed which opened the pathway for a category of illegal immigrants, leaving out Muslims specifically. In the run-up to the legislation, the government also declared its intentions to create a National Register of Indian Citizens (NRIC), with senior functionaries and party leaders making much of their assurance to those who would be excluded from NRIC to make use of the CAA to reclaim Indian citizenship, while 'Muslim infiltrators' would be detained and deported. The potential danger of the CAA-NRIC combination galvanised India's Muslims and led to widespread protests against these measures across the country. Demonstrating the traditional hostility against Muslim assertion, the State hit back against dissent with an iron fist. In Assam, the first state to witness anti-CAA protests, at least five persons were killed in police firings. In Uttar Pradesh, 22 people were shot dead on a single day. Such trends continued throughout the nation.

Legislative assembly elections in Delhi in February 2020 provided the BJP with an opportunity to delegitimise the anti-CAA protests through communal polarisation. Throughout the campaign period, BJP leaders, including senior ministers and MPs, resorted to crude dog whistling, seeking votes for the party by reviling Muslims and referring to anti-CAA protestors as 'anti-nationals', 'traitors' and 'terrorists'. Though the party lost the elections badly, the Islamophobic tenor of the campaign created a fertile ground for the further targeting of Muslims.

Under the cover of the Covid-19 pandemic, the Indian government has begun systematically targeting Muslim youth and other prominent activists using draconian security laws and preventive detention measures. The attempt has been to silence the democratic voices that had so remarkably emerged among Muslims and civil society in India to challenge the democratic backsliding that CAA 2019 represented.

***Erased Civic Space in Kashmir***

Civic space in Kashmir has historically been restricted. Authorities have relied on extraordinary laws (including the Public Safety Act—PSA and the UAPA) to detain activists and protesters, imposed section 144 of Code of Criminal Procedure (CrPC) indiscriminately, and frequently resorted to Internet shutdowns—recording at least 180 instances of internet blockades since 2012. They have also used ‘less-lethal’ as well as ‘lethal’ weapons against protesters, including against children. Extrajudicial executions and enforced disappearances of civilians have been common. All these measures have been aimed at crushing dissent.

On 5 August 2019, Indian government abruptly and unilaterally revoked Article 370, stripping Jammu and Kashmir of its nominal autonomy and removed Article 35A, taking away guarantees for the state’s indigenous population. This has been a long-standing BJP agenda—for forcible integration of the restive province, over which India has fought several wars.

Abrogation of Article 370 was followed by ‘preventive’ detention of thousands of persons, particularly politicians, community leaders, business associations, civil society members and the youth. The idea behind this seems to be to remove, at one go, the entire civic leadership of the state, and anyone able to influence public opinion, organise populations and raise voice.

Freedom of press has come under serious threat, with the government issuing a media policy in June 2020, that seeks to regulate media reporting, empowering authorities to decide what is ‘anti-social’ and ‘anti-national’ news, and prescribing actions against outlets deemed to be publishing ‘objectionable’ news. Once blacklisted, outlets face a ban on receiving government advertisement as well as potential criminal proceedings.

Despite attempts to prevent dissent, protests have successfully been conducted to which authorities have responded by tear gassing, pepper spraying, beating, and chasing away protesters. There is also an absence of judicial relief, as despite mass arbitrary detentions, both the High Court and Supreme Court (SC) have been unenthusiastic about taking up habeas corpus applications filed by those seeking freedoms. Similarly, the SC hearing a Public Interest Litigation

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. This was in the face of a sea of evidence to the contrary, including a report filed by the police that itself reported minors in detention.

### **Nepal**

Civic space in Nepal has played a critical role in movements and opposition to the government in various points in its history. While the civic space contributed to the overthrow of the monarchy in 2006, civil society soon lost its influence, and instead experienced fragmentation and party politicisation. Since then a number of attempts have been made by the government to curtail civic activism although without success so far. The Social Welfare and Development Act drafted in 2014 was not passed, but had it, it would have had a number of provisions that could have constituted violations of freedom of association. A new law, the proposed Act Related to Social Associations and Organisations 2019 is also repressive since, apart from other restrictions and bureaucratic hurdles, it severely curtails the spontaneous emergence of actors to protest against or mobilise for a cause. The National Integrity Policy proposed in 2018 also stressed strong vigilance over non-government and private sectors, along with burdensome reporting and procedural requirements, increased restrictions on the scope of activities as well as access to funding.

Similar attempts at controlling the media have also been attempted such as the amendment to the Media Council Bill, filed in September 2019, with a proposal to include ‘journalists’ licence’, which would require all journalists to pass an exam, widely interpreted as another obstacle to the functioning of free press in the country. The Criminal Code of 2018 also threatens journalistic practices as journalists could face up to three years in prison and monetary fines if they publish information deemed ‘confidential’.

### ***Impediments to Civic Space for Religious Minorities***

There are policies that impede the functioning of organisations based on the assumption of their ‘religious interests’. The Inter-

national Development Cooperation Policy 2019 directs foreign NGOs to fund development work in a clear attempt to keep foreign funding away from proselytisation efforts. The policy is still more jarring when taking into consideration that apart from Buddhist monasteries, all other religious groups have to register as NGOs or non-profit entities to operate legally. This creates an inherent problem as religious groups must function as an NGO, yet NGOs that receive foreign funding cannot undertake religious activities.

Christian faith-based NGOs also report facing increased scrutiny in their hiring practices, especially when they seek to hire members of the Christian faith for tasks that require knowledge of the religion and its practice. Contradictory laws that disadvantage certain communities over others also still exist in Nepal such as the criminalisation of slaughtering of cows, animals that are sacred only in Hinduism.

#### ***Response to Attempts to Curtail Civic Space***

There has been widespread opposition to the attempt to pass laws that could systematically ramp up curtailment on civil liberties in the country. The NGO Federation, in particular, has taken up the mantle to bring the government's attention to the overly restrictive provisions of the draft National Integrity Policy such as the requirement that INGOs get approval for their annual programmes and budget from the Finance Ministry, and that they should not send their reports to the country they are headquartered in without permission from the Nepal government. In 2018, four UN Special Rapporteurs expressed their reservations on the proposed National Integrity Policy, arguing that 'some of the provisions of the Integrity Policy would have a serious negative effect on the activities of civil society and restrict the freedom of expression and freedom of association'.

#### ***Civic Space during Covid-19***

The Government of Nepal has displayed control over civic space during the pandemic, from inconsistency in their approach toward CSOs, and suppressing peaceful protestors in the time period of a couple of months to attempting to silence all forms of criticism.

The government also chose to use force to repress peaceful protests by the masses against the government's passive handling of the coronavirus pandemic, including over corruption in purchase of medical supplies, perceived nonchalance to the plight of migrant workers abroad and low-income households in the country, attempts by the government to pass repressive measures of surveillance amidst the pandemic, and mismanagement of quarantine facilities.

Meanwhile, the Women and Social Committee of the House of Representatives stated that the mobilisation of NGOs in combating the pandemic has been less than expected and directed the government to enable proper utilisation of the resources and tools that are available to these organisations. Parliamentarians stated that NGOs must be of use to the general population during such disasters.

### **Pakistan**

Pakistan's transition towards electoral democracy in 2008 was a landmark event in the country's political history. Since then, Pakistan has experienced three elections—2008, 2013 and 2018—and seen two stable transfers of power from one political party to another. However, the quality of Pakistani democracy has deteriorated over the past few years. In particular, liberal democracy has failed to take root in Pakistan.

Centralisation of power—with its extensive internal and external security challenges—compelled the political leadership to assert control over the country and steer policy. The threat of India as well as colonial heritage played a significant role in facilitating centralisation of power. Civilian governments in Pakistan also failed to institutionalise democratic principles and uphold civil liberties and the rule of law. The political system in Pakistan 'keeps oscillating between the suppression and (re)conquest of public liberties'. Even till this day, Pakistan's incessant security fears, whether real or imagined, run counter to the wider project of encouraging the growth and maturation of liberal democracy. Moreover, cycles of military and civilian rule generated political instability that was inimical to effective functioning of political processes.

***Politics of Religion***

The 1973 constitution retained Islamic provisions that undermined certain progressive clauses included in the constitution for the protection of religious minorities. It made Islam the official religion, restricted the office of President and Prime Minister to Muslims, and contained clauses that called for bringing all laws into conformity with Islam. Other laws later introduced further violated the fundamental rights of religious minorities—such as the passage of the Second Amendment declaring members of the Ahmadiya sect as non-Muslims in response to the pressure exerted by religious parties. Another piece of legislation with dire implications for minority rights was the constitutional amendment known as the Blasphemy Laws. These are a set of clauses, contained in the Pakistan Penal Code (1860) and ostensibly designed to promote the protection of all religions in Pakistan. In reality, the law explicitly discriminates against Ahmadiyas since parts of it criminalise public expression of Ahmadiya beliefs and prohibit Ahmadiyas from calling themselves Muslims, praying in Muslim sites of worship and propagating their faith. The blasphemy laws are used for persecuting religious minorities over trivial issues and false claims.

The electoral law forces Ahmadiyas to choose between their faith and their right to vote: to be eligible to practise their democratic right in choosing electoral representatives, they have to publicly declare themselves to be non-Muslims. On May 5 2020, Pakistan's cabinet established the National Commission for Minorities (NCM) and announced that Ahmadiya representatives would not be included, arguing that they did not 'fall in the definition of minorities'. Although factually inaccurate, this decision was not opposed by any cabinet member. Human Rights Watch noted that '[t]he Ahmadi are among the most persecuted communities in Pakistan and to exclude them from a minority rights commission is absurd'.

Public protest is not an outlet available to religious minorities, as most fear violence and retaliation by extremists. The right to associate, assemble, and express is also hindered through the communal clamping down of churches. Christians cannot

effectively gather and pray because of the increasing opposition to the existence of churches in non-metropolitan areas.

After Ahmadiyahs, the minority sect of Shia Muslims has also become a target of religious extremism. International human rights observers have noted that the Shia Hazara community of Pakistan has faced severe violence at the hands of militants, and a 2018 report by the National Commission for Human Rights Pakistan noted that more than 2000 Hazaras have been killed in the previous 14 years in Pakistan.

Violence is also perpetuated against vulnerable members of the Hindu community. Hindu girls in Sindh, often underage, are abducted by Muslim men, coerced to convert to Islam and marry their abductors. In the process, they face both physical and psychological violence and are forced to cut ties with their families. There have also been cases of Hindu temples being converted to schools and science laboratories with the local Hindus too afraid to report cases even anonymously. A considerable section of the Hindu community inside Sindh are Scheduled Caste Hindus, who make up a significant portion of bonded labour in Sindh. Although bonded labour is prohibited through the Bonded Labour Abolition Act 1992, practices go unchecked in numerous areas of Sindh and authorities are hesitant to intervene fearful of retributive action by powerful ruling families.

### ***Politics of Security***

With the military overlooking governance, politics and policy, especially national security and foreign affairs, there is constant surveillance of civil society. Perceiving CSOs as threats to stability and security, the establishment obstructs their activities in the name of ‘national interest’. NGOs and INGOs are subject to extensive regulation involving multiple, lengthy procedures of registration, security clearance, and approvals for funding.

The notorious sedition law—Section 124A of the Pakistan Penal Code—is frequently deployed to arrest and incarcerate those demanding social and political reforms. There have also been innumerable cases of enforced disappearances, rapes, and extrajudicial killings of activists.

Journalists, writers and human rights activists who advocate for the rights of minorities and for free speech, or offer liberal perspectives are being curbed increasingly in the country. Media outlets, small and large, as well as independent writers have experienced growing backlash, harassment, intimidation and criminalisation. A Pakistani Baloch journalist Sajid Hussain Baloch was found dead in Sweden in May after he had gone missing in March. Human rights activists and civil society workers are increasingly facing questioning at airports about their reasons for international travel and participation at international conferences.

Progressive and liberal university professors face intimidation from students as well as conservative administration and faculty members in the form of dismissals and even arrests. Lawyers defending human rights, including cases of minorities related to blasphemy, and Christian and other minority lawyers continue to face threats for the work they do.

### **Sri Lanka**

In 2015, the Yahapalanaya government was elected on a platform of good governance, providing a political solution to the ethnic conflict, including constitutional reform, and dealing with the past. The promises were unfulfilled or were mired by scandals, bolstering the opposition's continuous campaign to portray the Yahapalanaya government as anti-Sinhalese and pro-minority, with the government doing little to counter these misrepresentations and fake news.

Under the Yahapalanaya government, civic rights were curtailed, including discriminatory application of laws curbing freedom of expression, which were not applied to those from the majority group propagating hate and inciting violence against minorities. The Easter Sunday terror attacks of April 2019 caused a considerable shift in the socio-political context, both in terms of civic space and the rights of minorities. The declaration of a state of emergency and the promulgation of Emergency Regulations under the Public Security Ordinance contributed to the shrinking of civic space and restrictions on freedom of expression, association and assembly. Emergency Regulation

13 empowered the President to prohibit public processions or meetings ‘likely to cause a disturbance of public order or promote disaffection’. Emergency Regulation 71 allowed a police officer or member of the security forces to require a person or persons to be removed from any public space but did not stipulate reasonable grounds upon which such an order may be issued. Regulations include restrictions of publications by the competent authority if it ‘might be prejudicial to the interests of national security or preservation of public order’; criminalisation of possession of a book, document or paper the contents of which are deemed ‘likely to be prejudicial’ to national security or preservation of public order, or ‘which is likely to arouse, encourage or promote feelings of hatred or contempt to the Government’.

A related factor that enabled the retention of the national security framework in which adequate and effective human rights protections were absent, and which has disproportionately affected Tamils and from April 2019, Muslims, is the failure to repeal the Prevention of Terrorism Act (PTA) and replace it with a human rights-based national security framework. The PTA has been flagged for decades as a law that violates crucial human rights, in particular due process rights, and denies the accused the right to a fair trial. A key example of the Yahapalanaya government ignoring calls for accountability for human rights violations is the appointment of Major General Shavendra Silva in August 2019 as Commander of the Army by the President despite serious allegations of violations of human rights and humanitarian law against him.

The period after the 2019 Easter attacks saw Muslims being subjected to discrimination, harassment, arbitrary arrest and detention, and even violence. After the Easter attacks, Muslims, particularly a large number of Muslim men, were arrested seemingly without reasonable cause. As mosques were seen as breeding grounds for terrorism and extremist ideologies, they, along with religious schools, came under severe scrutiny. State inaction in the face of anti-Muslim violence and the selective and arbitrary use of the law against Muslims has legitimised anti-Muslim rhetoric, propaganda and conspiracy theories that deepen the divides between ethnic groups.

The grievances of the Tamil community remained largely unaddressed by the Yahapalanaya government. The public rhetoric of key figures in government, such as President Sirisena, denied the need for accountability, and at times even showed a lack of respect for the victims and their demands for justice, truth and reparations—publicly claiming that war heroes would not be prosecuted, and callously stating that those who disappeared were probably dead.

There have also been several instances of violence against Christians as well as pastors—in many cases, even though complaints were filed, there has been complete police inaction and justice has not been served.

#### ***Post-2019 Presidential Elections***

After the election of Gotabaya Rajapaksa as president, like Sirisena before him, he began to call out the armed forces to maintain law and order. Militarisation, which had been temporarily frozen during the Yahapalanaya regime, began accelerating in the Gotabaya regime with the military playing an increased role in civilian affairs as well as law enforcement. For instance, the police was brought within the purview of the Ministry of Defence. Rajapaksa also announced that Sri Lanka would withdraw from Human Rights Council Resolution 30/1 and 40/1, which it formally did in February 2020.

#### ***Impact of Covid-19***

The arrest of thousands of persons and seizure of thousands of vehicles for violating a curfew that did not legally exist during the pandemic is illustrative of the state taking punitive action against citizens and depriving them of liberty even in instances when they are not legally empowered to do so. The implementation of the de facto curfew was undertaken in a selective and arbitrary manner. For instance, thousands of people who attended the funeral of former Minister of Community Empowerment and Estate Infrastructure Development, and the Leader of the Ceylon Workers Congress Arumugam Thondaman were not arrested. In contrast, former opposition member of parliament Ranjan

Ramanayake was arrested while distributing rations to persons who were adversely impacted by the Covid-19 lockdown.

The Covid-19 response has also been militarised with military personnel in positions in the various task forces for disaster management and the provision of relief. Measures were also taken by the government to curtail civil liberties under the guise of responding to the pandemic. An example of this is the notice issued that strict action is to be taken against those that ‘criticise’ state officials, point out ‘minor shortcomings/failures’ or ‘scold/chastise’ state officials performing their duties, which adversely impacts on the freedom of expression, in particular the expression of dissent.

### ***Rights of Minorities***

The stigmatisation and scapegoating of Muslims has taken many forms, including senior state officials blaming the community for the spread of Covid-19 and the community being denied the right to bury those who die of Covid-19. One of the means used to delegitimise complaints of discrimination or marginalisation is by portraying Muslims as seeking or enjoying exceptional privileges, despite which they continue to unfairly claim they are discriminated. The incitement of hatred and vitriol by media outlets continues unabated. For example, Muslim Covid-19 patients were identified by their faith, unlike other patients, and blamed by the media for spreading coronavirus.

There is higher level of scrutiny in the north of the country. In one instance, the police cited quarantine requirements and obtained a court order to prevent members of the Tamil National People’s Front (TNPF) from holding a commemoration event in Jaffna. On the same day though, the government held an event with the participation of certain members of the government, the armed forces, and some families of soldiers to commemorate War Heroes Day in Colombo. The Rajapaksa government decreed that the national anthem would not be sung in the Tamil language on Independence Day 2020, despite Tamil being an official language. It should be noted that the denial of the right to use the Tamil language was one of the root causes of the ethnic conflict in Sri Lanka.

## **Key Recommendations**

### *For national governments*

- i. Abide by international commitments agreed upon by the country.
- ii. Remove all legal contradictions existing in various laws of the country and adjust them to international treaties to which it is a signatory.
- iii. Specifically, remove provisions from existing laws that make it difficult for civil society organisations to register, re-register or function in the country.
- iv. Recognise minorities in the constitution, if not done so already, and ensure constitutional provisions to criminalise discrimination of all forms against minorities.
- v. Improve the enabling environment and develop an effective protection mechanism for HRDs and civil society actors in close consultations with all stakeholders, including CSOs and human rights organisations.
- vi. Implement effective and holistic action to eliminate the underlying motives for threats to religious minorities and civic space for minorities, and to combat growing fundamentalist voices threatening a free and democratic society.
- vii. Take swift action to tackle rising terrorism and violence, ensuring impartial investigations and the prosecution of those responsible for attacks against religious minorities, in order to end the culture of impunity around these crimes.
- viii. Implement all the recommendations the countries receive on the circumstances of HRDs provided by the UN Special Rapporteur and other relevant reports.
- ix. Ensure that the Covid-19 pandemic does not result in long-term curtailment of civic space in any way.

### *For the international community*

- i. Ensure greater attention by UN and other international entities on civil and political rights violations in South Asia.
- ii. Facilitate the development of South Asian regional

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initiatives and mechanisms to address various forms of restrictions of civic space in the region.

*For civil society/minority groups*

- i. Foster greater regional civil society initiatives to push back against restrictions by national entities.
- ii. Enable channels for greater solidarity across borders, and expressions of support for victims of targeting in individual countries.
- iii. Facilitate and participate in greater sharing and learning between various groups across borders.

# Shrinking Civic Spaces for Human Rights Defenders in Afghanistan

Abdul Rahman Yasa

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## Background/Problem Analysis

After the collapse of the Taliban regime in 2001, a relatively better democratic environment for civil society and human rights began to emerge in Afghanistan. In spite of the massive challenges of general insecurity, civil society and human rights institutions started their journey to assess the status of rights of various sections of society and institutionalise democratic values as a whole. The country's nascent civil society also began working with a legal, albeit deficient base, which became enshrined in the constitution of 2004. Along with a commitment to 'form a civil society void of oppression', the constitution forbade 'any kind of discrimination and distinction' among citizens of Afghanistan.<sup>1</sup> In practice, however, the civic environment remains highly precarious for Human Rights Defenders (HRDs) in the country.

In 2001, the Law on Protest, Assemblies, and Strike was drafted by the Islamic Transitional Government of Afghanistan, which guaranteed the mechanisms for civic protest. However, public space for civil society and the HRDs has begun to shrink after 2014 as the government 'attempted to restrict the right to peaceful assembly and to crack down on protests and demonstrations by amending this law' in a draft bill.<sup>2</sup> This attempt subsequently faced condemnation from civil society and human rights activists and is now pending

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<sup>1</sup> The Islamic Republic of Afghanistan, *The Constitution of Afghanistan* (Kabul: The Islamic Republic of Afghanistan, January 3, 2004), <https://bit.ly/2xcAulA>.

<sup>2</sup> Mandgar Daily, 'Draft Law on Protest, Assemblies and Strike', *Mandgar Daily*, July 11, 2017, <https://bit.ly/33GzulN>.

before the parliament. In 2016, although President Ashraf Ghani promised the protection of the HRDs as the ‘sole responsibility’ of his government, his government itself has been responsible for intimidation, harassment, and threats against them.<sup>3</sup> During this time, the government has used a ‘fear-mongering policy’ by exaggerating the level of threat and engineering the security situation in order to prevent the people from holding protests in the future.

Moreover, non-state actors, including Afghan powerbrokers and terrorist groups such as the Taliban and the self-declared Islamic State (ISIS), too, have posed serious threats to the HRDs in the country. For example, the killing of Samad Amiri, the Acting Director of the Afghanistan Independent Human Rights Commission, in September 2019 by the Taliban is one of the hundreds of examples of violence against HRDs in the country.

The other growing concern in the context of the legal and regulatory environment for HRDs and civil society groups is the decline of freedom of expression. Both the constitution enacted in 2004 and the Mass Media Law of 2009 guarantee this right. However, in practice, it has become increasingly difficult in recent years to exercise it freely.<sup>4</sup> Despite legal protection, the environment for freedom of expression has become precarious in recent years as government officials, illegal armed groups, politicians, the Afghan security forces, and mafia groups continue to ride roughshod over this right. In the first six months of 2017, 73 cases of violence against journalists were recorded, the highest in recent years.<sup>5</sup> This trend has caused a significant level of ‘self-censorship’ as a means of survival for most reporters, especially those working in remote provinces.<sup>6</sup>

As in many South Asian countries, discrimination against minorities has been historical in Afghanistan. However, reflecting

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<sup>3</sup> Amnesty International, ‘Afghanistan: Human Rights Defenders Under Attack’, *Amnesty International*, August 28, 2019, <https://bit.ly/3dk3hFg>.

<sup>4</sup> Afghanistan Institute for Civil Society, *The State of the Enabling Environment for Civil Society in Afghanistan* (Kabul: Afghanistan Institute for Civil Society, September 2018), <https://bit.ly/3aiVPs8>.

<sup>5</sup> Afghan Journalist Safety Committee, *Six-Month Report (Jan-June 2017) Afghanistan, a Dangerous Country for Journalists and Media* (Kabul: Afghan Journalist Safety Committee, 2017), <https://bit.ly/39e8Ku9>.

<sup>6</sup> Mariam Amini, ‘Afghanistan’s Media Self-Censors to Survive’, *Human Rights Watch*, April 10, 2019, <https://bit.ly/33jKlXf>.

on the issue of minority rights is a new phenomenon. Due to the sensitivity of the topic, civil society organisations (CSOs), and human rights activists are not currently working in the area of minorities and not much literature has been produced on the subject over the past 20 years. Therefore, this chapter intends to examine the civic space for HRDs in Afghanistan in general, mainly after 2014. Additionally, it will explore the legal, economic, security, and political measures that have been used to place restrictions on certain civic freedoms, including freedom of expression, association, and assembly. This will be discussed in the context of the ongoing Afghan peace process with the Taliban and its implications for HRDs and civil society activists if any political agreement is reached.

### **Research Objective and Design**

The overall objective of this paper is to examine the dwindling civic space for HRDs and human rights activists in the time period from 2014 till early 2020 in Afghanistan while also providing a list of recommendations to the Afghan government, CSOs, and international donors.

The study will in particular:

- Explore the legal, economic, political, and security environment for HRDs in Afghanistan;
- Analyse the implication of different policies and legislations of the Afghan government on freedom of expression, association, and assembly;
- Explore different cases of shrinking civic space for HRDs and threats against them;
- Explore the past and present environment for HRDs in the context of the ongoing Afghan-Taliban peace talks; and
- Provide recommendations on protection mechanisms to be established to improve civic space for HRDs.

The chapter is based on the use of qualitative methods, combining content analysis and in-depth interviews. The review of secondary literature involved exploring and examining reports, research

papers, the country's laws, and international human rights documents. In addition, several in-depth interviews were conducted with Afghan experts and key informants, such as members of civil society, legal experts, and journalists. Content analysis of data is expected to generate expertise-based insights and a rich understanding of the environment for HRDs in Afghanistan.

### **HRDs in Different Legal Environments**

After the fall of the Taliban in 2001, Afghanistan's new political order provided room for CSOs as an integral element of a fragile democracy. The emergence of the HRDs is an important achievement of the past 20 years and, even with all its shortcomings, the establishment of the legal system provides the foundation to regulate civic and human rights activities. However, the process has neither been smooth nor gone unchallenged throughout this period. Legal hurdles, economic challenges, security, and political problems continue to impact civic space, especially for minorities, in Afghanistan.

### **Constitutional Context**

CSOs are recognised in various Afghan laws. However, in practice, the space is very narrow for civil society activists and the HRDs. The 2004 Constitution provides the citizens with the right to form associations and freely express their thoughts and opinions through different media. The Constitution notes that 'we the people of Afghanistan...form a civil society void of oppression, atrocity, discrimination as well as violence, based on rule of law, social justice, protecting the integrity and human rights, and attaining peoples' freedoms and fundamental rights'.<sup>7</sup> Article 34 also stipulates that 'freedom of expression is inviolable ... [and] every Afghan has the right to express his thought through speech, writing, illustration, or other means, by observing the provision' of the constitution.<sup>8</sup> Freedom of expression is further underpinned by Article 7, which requires the government to abide by international

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<sup>7</sup> The Islamic Republic of Afghanistan, *The Constitution of Afghanistan* (Kabul: The Islamic Republic of Afghanistan, January 3, 2004), <https://bit.ly/2xcAulA>.

<sup>8</sup> *Ibid.*

conventions to which Afghanistan is a signatory, and the Universal Declaration of Human Rights (UDHR).

Although the constitution appears to be progressive, it remains cautiously and paradoxically conservative. Thus, while it requires the government to observe all the international treaties and charters to which Afghanistan is a state party, Article 3 of the constitution resists any law that ‘contravenes the tenets and provisions of the holy religion of Islam’.<sup>9</sup> The ‘tenets of the holy religion of Islam’ is also a general and ambiguous legal phrase, creating leeway and being open to misinterpretations. While Articles 7 and 34 grant the right to freedom of expression, Article 3 unequivocally restricts it. Despite the fact that the Afghan government has committed itself to observing the UDHR, Article 3 is in direct conflict with Article 18 of the Declaration, which endows the people with ‘freedom of thought and religion.’<sup>10</sup> Article 6 of the constitution requires the government to protect human rights; however, no mechanism that can safeguard the lives of the HRDs has been established. Many observers believe that ‘as the Afghan government is busy with many basic challenges, protection of HRDs has not been a priority.’<sup>11</sup> Therefore, these obvious contradictions and shortcomings in the constitution demonstrate a failure to protect the individual rights to freedom of expression, religion, belief, and further violates international human rights standards.

### **Mass Media Law**

As a part of the unfolding democratic process, the rise of the media in Afghanistan has been a significant achievement of the post-2001 reconstruction efforts. From limited or no media outlets prior to 2001, the country now hosts hundreds of private radio and television stations and a panoply of magazines and newspapers circulating on a regular basis. The new media outlets play an increasingly critical role in Afghanistan, including facilitating public debate and shaping public opinion on different aspects of life in the country.

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<sup>9</sup> Article 3, *ibid.*

<sup>10</sup> United Nations, *Universal Declaration of Human Rights* (Geneva: United Nations, December 10, 1948), <https://bit.ly/2B7Lcyp>.

<sup>11</sup> Anonymous, one aid organization, interview by Abdul Rahman Yasa, April 21, 2020.

In 2009, the Afghan parliament approved the Mass Media Law (MML) which is considered to be a promising step forward in consolidating freedom of expression. However, there are serious restrictive clauses and ambiguous terms in the law that increase concerns about squeezing freedom of expression. For example, the introduction part places emphasis on the role of religion by recalling Article 3 of the constitution, which makes it impossible for any law to contradict the principles of Islam.<sup>12</sup> Also, Chapter 19 of the law prohibits publication of certain materials that contains ambiguities and limitations. Restrictions on materials ‘contrary to the principles of Islam’, ‘insulting’, considered ‘libellous/defamatory’ or ‘promoting religion other than Islam’<sup>13</sup> are not only in conflict with the spirit of the UDHR but also contradict Article 19 of the International Covenant on Civil and Political Rights (ICCPR). Vague terms such as ‘insult’ or ‘libellous’ in the law can also be open to different interpretations. In practice, this gives law enforcement agencies the opportunity to interpret this article in ways to restrict freedom of press and expression.

Moreover, Afghanistan has been the most dangerous place for journalists with increasing deterioration of security in recent years. Due to the existence of a culture of impunity and failure of law enforcement, any allusion to sensitive issues, including corruption, land grabbing, violence against women, and human rights violations becomes life-threatening enough to force journalists into self-censorship.<sup>14</sup> Although the stated purpose of the MML is to guarantee citizens’ right to freedom of thought and expression, those who strive to promote this right are not safe. This is especially true when the MML lacks the mechanism to protect journalists and media activists, and safeguard conditions for the free operations of mass media.

The 2009 MML also included a provision for the establishment of the Media Complaint Commission within the Ministry of Information and Culture. Chaired by the minister, the commission

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<sup>12</sup> Ministry of Justice of Afghanistan, *Mass Media Law* (Kabul: Ministry of Justice of Afghanistan, July 6, 2009), <https://bit.ly/2Al6OUD>.

<sup>13</sup> Ibid.

<sup>14</sup> Human Rights Watch, ‘Afghanistan: Media under Attack’, *Human Rights Watch*, January 21, 2015, <https://bit.ly/3dfu5WU>.

largely served as a ‘cudgel’ to intimidate the press and control the media streams under the pretext of violating media regulations.<sup>15</sup> In 2015, following a growing concern and anger among journalists and media outlets across the country, the government decided to dissolve the commission.

### **Non-Governmental Organisations Law**

After 2001, a large number of non-governmental organisations (NGOs) emerged to strengthen democratic values and support development programmes in Afghanistan. Subsequently, in 2005, the Afghan government passed a law on NGOs with the aim of promoting professionalism and accountability as well as legalising and regulating their activities. In 2017, however, the Afghan government made an attempt to change this law by bringing several provisions that stirred up criticism and opposition from CSOs and human rights activists, which called the new amendment highly restrictive and problematic.<sup>16</sup> The changes proposed included the following:

- All NGOs shall re-register their organisations every three years;
- The government can refuse to register an organisation for ‘technical reasons’; and
- When holding their annual General Assembly, CSOs must invite the representative of the Ministry of Economy of Afghanistan (MoEC).<sup>17</sup>

The ambiguities and issues that emerge from the proposed changes provide grounds for misuse and confusion. In addition to a burdensome bureaucratic process, the ‘re-registration’ clause allows the government to arbitrarily refuse to re-register a CSO,

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<sup>15</sup> Afghanistan Journalists Center, ‘A Hard-Fought Victory for Afghan Media: Media Complaint Commission Dissolved’, *Afghanistan Journalists Center*, May 6, 2015, <https://bit.ly/2MdKgrH>.

<sup>16</sup> Zaman Sultani, South Asia Researcher for Amnesty International, interview by Abdul Rahman Yasa, April 20, 2020.

<sup>17</sup> Anonymous, Independent Researcher, interview by Abdul Rahman Yasa, May 8, 2020.

leading to its automatic removal. Similarly, the issue of ‘technical reasons’ is not only vague but also authorises the government to avoid registering an organisation.<sup>18</sup> By sending their representative, the government intended to keep maintaining its influence on CSOs. The ensuing outcry, however, forced the government to withdraw the bill.

### **Access to Information Law**

The enactment of the Access to Information Law (AIL) in 2018 is a promising step forward to consolidating the freedom of press and expression and improving transparency and accountability. However, without effective implementation, this law, like many other forms of legislation, will have little or no effect. Prior to its ratification, Afghan journalists, CSOs, and HRDs were continuously being denied access to information from government bureaucrats and officials. They were, and continue to be, subjected to threats, intimidation, and violence while reporting.<sup>19</sup> Government officials used to deny journalists access to government documents over fear of disclosure of corruption scandals. The AIL challenges those wrongdoers and powerbrokers in the government and forces them to abide by the rules.

Article 50 of the Afghan Constitution guarantees citizens the right to access information from state departments and Article 34 provides the right to freedom of expression.<sup>20</sup> The AIL, however, is the first legislative move of its kind in the country. Pursuant to this law, state institutions are required to make information available upon request to the general public.<sup>21</sup> Likewise, the law requires the government to ‘ensure people can access all the information necessary to realise their human rights and hold the authorities accountable for their actions in the spirit of transparency’ and to curb corruption.<sup>22</sup> Despite what is laid down in the AIL, the

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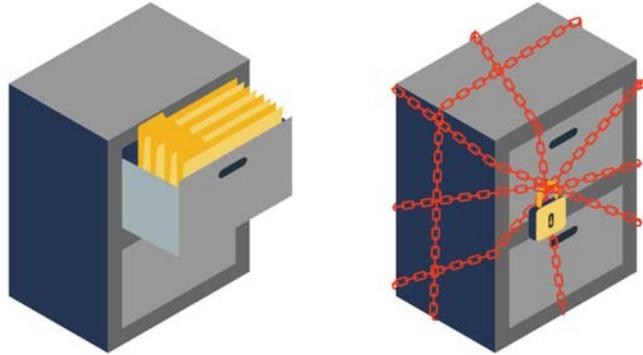
<sup>18</sup> Ibid.

<sup>19</sup> Amnesty International, ‘Afghanistan: Implement Access to Information Law’, *Amnesty International*, February 5, 2020, <https://bit.ly/2BlQqEd>.

<sup>20</sup> Ministry of Justice of Afghanistan, *Access to Information Law* (Kabul: Ministry of Justice of Afghanistan, March 31, 2018), <https://bit.ly/3goDSvA>.

<sup>21</sup> Ibid.

<sup>22</sup> Amnesty International, ‘Afghanistan: Implement Access to Information



government's severe restrictions on state-owned information has and continues to be a problem.<sup>23</sup> Moreover, under this law, the government has to protect those individuals who disclose cases and information related to corruption, mismanagement, and human rights abuses. Since the law still fails to outline mechanisms to protect such whistle-blowers, it can be a discouragement against speaking out.

Another challenge to effective implementation of the AIL is the lack of public awareness about the existence and significance of the law. Many people have little or no idea of enforced laws in the country. This means that even when they face challenges and obstacles, they cannot exercise their legal rights. To handle this problem, rigorous public awareness-raising programmes are needed to highlight on the existence and importance of this and other relevant laws.

### **The Law on Gatherings, Strikes, and Demonstrations**

The Afghan constitution protects the right of citizens to freedom of assembly and association and to peacefully express their demands and concerns. According to Article 36, people can achieve their legitimate demands peacefully by holding unarmed

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Law', *Amnesty International*, February 5, 2020, <https://bit.ly/2BlQqEd>.

<sup>23</sup> Haseeb Maudoodi, 'Afghan Media Watchdog Calls for Information Policy Enforcement', *BBC*, February 5, 2020, <https://bit.ly/307XjmU>.

demonstrations.<sup>24</sup> The endorsement of the new Law on Gatherings, Strikes, and Demonstrations in 2003 (hereinafter, Assembly Law) further corroborates the efforts to promote human rights and space of openness in the country. According to this law, ‘the government shall ensure the security and safety of gatherings, strikes, and demonstrations’.<sup>25</sup> In practice, however, security forces have not only refrained from providing necessary security, but they have deliberately targeted protesters, leaving several dead and wounded in many cases. For example, more than five people were killed in Kabul, in June 2017, after the police opened fire on protesters who had been demanding the government to step down.<sup>26</sup> And in May 2020, the police killed at least four civilians, including a journalist, and injured 14 others in the central Ghor province.<sup>27</sup> The incident took place after dozens of civilians had gathered outside the provincial governor’s office to protest against the negligence of the local administration towards poverty-stricken families during the Covid-19 pandemic.

The enacted Assembly Law still places significant restrictions on gatherings, protests, and demonstrations in Afghanistan, which is a serious concern for HRDs. Article 14 of the Assembly Law specifies that if a place of gathering is not deemed safe or secure, demonstrators and their leaders will have to immediately evacuate the place once ordered by the police or face prosecution.<sup>28</sup> The issue with this Article is that the term ‘security reasons’ is ambiguous and open to interpretations and will likely be misused by the police to limit the right to protest by prosecuting protesters. Article 10 of the Assembly Law provides the police with the authority to

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<sup>24</sup> The Islamic Republic of Afghanistan, *The Constitution of Afghanistan* (Kabul: The Islamic Republic of Afghanistan, January 3, 2004), <https://bit.ly/2xcAulA>.

<sup>25</sup> Ministry of Justice of Afghanistan, *The Afghan Law on Gatherings, Strikes, and Demonstrations* (Kabul: Ministry of Justice of Afghanistan, March 13, 2003), <https://bit.ly/2TSjaLa>.

<sup>26</sup> Secunder Kermani, ‘Kabul Bomb: Protesters Shot Dead in March in Afghan Capital’, *BBC*, June 2, 2017, <https://bbc.in/2MmUMwU>.

<sup>27</sup> Ayaz Gul, ‘Afghan Protesters Killed in Clashes with Police’, *VOA*, May 9, 2020, <https://bit.ly/34PI98a>.

<sup>28</sup> Ministry of Justice of Afghanistan, *The Afghan Law on Gatherings, Strikes, and Demonstrations* (Kabul: Ministry of Justice of Afghanistan, March 13, 2003), <https://bit.ly/2TSjaLa>.

resort to force.<sup>29</sup> Under the Afghan Police Law, when a suspect does not comply with police warnings, the police can resort to shooting the suspect. However, though public gatherings, strikes, and demonstrations are one's political right, resorting to force or shooting at the protesters is an outright violation of international human rights laws to which Afghanistan is a signatory. Moreover, pursuant to Article 21 of the Assembly Law, 'nobody shall organize gatherings, demonstrations, and strikes during the state of emergency'.<sup>30</sup> And yet, the term 'state of emergency' is vague, general, and interpretable, i.e., the police can practically stop any demonstration and protest under this pretext.

During the National Unity Government (NUG), several demonstrations took place in Kabul and other provinces to challenge government policies.<sup>31</sup> The Farkhunda demonstration in March 2015, the so-called Tabasum Movement in November 2015, two mass protests of the Enlightenment Movement in 2016, and the Uprising for Change in 2017 defied the government. These protests, and the government's inability to peacefully control them, enabled the National Security Council (NSC) of Afghanistan to mull over changing the Assembly Law and restrict the citizens' right to protest. In 2017, the NSC ordered to renew the Assembly Law, which proposed significant changes. When a copy of the new draft leaked to the media, it faced strong pushbacks from CSOs and civil society activists.<sup>32</sup> The Afghanistan Independent Human Rights Commission, several CSOs, and HRDs maintained that the new change to the Assembly Law would place more restrictions on civic space to organise and participate in protests and demonstrations.

According to the new draft, the police reserves the right to use 'technical barriers to blockade the route to demonstrators, as security officials identify them necessary.'<sup>33</sup> The terms 'technical

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<sup>29</sup> Ibid.

<sup>30</sup> Ibid.

<sup>31</sup> Ehsan Qaane, 'Afghanistan's New Law on Freedom of Assembly: Limiting the Space to Demonstrate', *Afghanistan Analysts Network*, August 26, 2017, <https://bit.ly/3cd5wsg>.

<sup>32</sup> Ibid.

<sup>33</sup> Afghanistan Independent Human Rights Commission and Civil Society

barriers' and 'as security officials identify them to be necessary' are not clear and can be open to interpretation. This will increase the chance of its misuse by security forces to block the roads to protestors. The new draft also stipulates that the demonstration or protest committee, consisting of three members deemed responsible for the protest, will be held accountable for any illegal actions during the demonstration.<sup>34</sup> The legal clause is at direct odds with Article 26 of the constitution, which reiterates that 'crime is a personal act' and that 'investigation, arrest, and detention of an accused, as well as penalty execution, shall not incriminate another person.' Hence, the government is not only violating Article 6 of the current enforced Assembly Law, which requires the government to ensure security and safety of gatherings but is also trying to restrict civic space for HRDs and civil society activists. This is an outright evasion of responsibility of the Afghan government to protect the public during gatherings and protests. More surprisingly, Article 21 of the new draft prohibits any gatherings, strikes, demonstrations, and sit-ins based on ethnicity, religion, region, and actions that harm the national economy or disrupt public order.<sup>35</sup> In a democratic environment, ethnic, religious, or other underprivileged segments of the society are able to question the government's discriminatory policies by holding protests or sit-ins to raise their legitimate voices. Therefore, enforcing such a law will clearly choke many ethnic minorities' voices, such as Afghan Hindus, Sikhs, and other dissidents from raising legitimate concerns. It also goes against the domestic and international human rights obligations of the Afghan government.

Although the new draft of the Assembly Law has not yet been formally passed by the parliament, the government has, in practice, always sought to limit civic space. These restrictions range from blocking the roads using military equipment and shipping containers to physical assault, arrests, and even deliberate shooting of protesters. In the face of deteriorating security situation, the

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Organisations, 'AIHRC's Consultative Meeting with CSOs to Review the Draft Law on Gatherings, Strikes, and Demonstrations', *Afghanistan Independent Human Rights Commission*, July 27, 2017, <https://bit.ly/2Xkc2ck>.

<sup>34</sup> Ibid.

<sup>35</sup> Ibid.

crackdown on civilian protests has had such a devastating effect that no one in Kabul dares to hold mass protests anymore. Civil society activists are concerned about the gradual shrinking of civic space by use of legislation, especially the latest draft law on demonstration. Zia Moballegh, a human rights activist, described the situation as such:

Given the citizens' unforgettable lessons from the horrific history of Afghanistan, people do not accept such repressive laws, especially freedom of expression, [...], and deprivation of meaningful civic participation because the participation of the people guarantees the current republican system and protects the elected government. Isolation of the state and attempts to confront citizens by resorting to any means, especially to suppressing civic participation and closing the sphere of democratic activities, are the early stages of the decline that will highly likely lead to an absolute dictatorship or fall into possibly civil war.<sup>36</sup>

### **Economic Environment**

With an influx of reconstruction funding in Afghanistan, a tremendous amount of money has been spent in the country. Several international philanthropic organisations and foreign embassies, together with the UN-affiliated organisations began supporting Afghan CSOs with financial assistance, inclusion in policy- and decision-making processes, and their relation with the Afghan government.<sup>37</sup> Over the last two decades, CSOs have played critical roles in various areas of human rights, women empowerment, peace, capacity-building, advocacy, and governance. And yet, concerns about the challenges CSOs are facing in Afghanistan are increasing. Since their rise in the post-2001 era, Afghan CSOs, as the government itself, have been heavily dependent on foreign aid. Thus, with the security transition to Afghan security forces

<sup>36</sup> Zia Moballegh, 'New Bill on Demonstration, Deliberate and Restrictive Ambiguity of Citizenship Rights', *Rah-e-Madanyat Newspaper*, July 12, 2017, <https://bit.ly/2XYgtcb>.

<sup>37</sup> The European Union, *Afghanistan: EU Country Roadmap for Engagement with Civil Society* (Brussels: EU, August 26, 2018), <https://bit.ly/3eT8gws>.

in 2014, there were fears of a decrease in international funding to Afghanistan that held back the majority of CSOs operating in the country.<sup>38</sup>

Over the past 20 years, international donors have followed two different aid provision mechanisms for Afghanistan: 1) on-budget, and 2) off-budget.<sup>39</sup> The former is disbursed through the Afghan government budgetary programmes, and the latter channelled through development partners other than the Afghan government such as the UN agencies and NGOs operating in Afghanistan. Since 2014, the shrinking of foreign aid and the trend to move a large proportion of off-budget aid to on-budget have left Afghan CSOs concerned over availability of finances to implement their activities.<sup>40</sup> Given the nature of foreign-aid dependency and project-driven income, any fluctuation in external aid will also affect the position and activities of CSOs in Afghanistan.

Given the financial constraints mentioned above, heavy taxation on media with little government support, especially during the NUG, has crippled a large number of TV stations, radio stations, and print media, mostly those based in the provinces of Afghanistan. As of August 2017, more than two hundred media outlets, mostly print, were closed due to financial problems.<sup>41</sup> Many journalists called on the Afghan government to fulfil its constitutional commitment to support the media with tax exemption or tax reduction, as most of the print media, in particular, have little or no permanent source of income.<sup>42</sup> Moreover, due to financial crisis at the time, a large number of CSOs and networks were either downsized or closed altogether.<sup>43</sup>

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38 Mariam Safi, 'Civil Society in Afghanistan: A Decade of Progress and Challenges', *Peace Insight*, December 20, 2012, <https://bit.ly/2UiRf7e>.

39 Abdul Rahman Yasa, 'From Security Sector Reform to Endemic Corruption: The Case of Afghanistan', *Journal of Strategic Security* 13, No. 3:109 (2020), <https://bit.ly/3nIr5Yr>.

40 The European Union, *Afghanistan: EU Country Roadmap for Engagement with Civil Society* (Brussels: EU, August 26, 2018), <https://bit.ly/3eT8gws>.

41 VOA, 'More than 200 Media Outlets in Afghanistan have been Shut Down in the Four Years', *VOA*, August 20, 2017, <https://bit.ly/2Y9kw5p>.

42 Ibid.

43 Sayed Hussain Anosh, Executive Director of Civil Society and Human Rights Network, interview by Abdul Rahman Yasa, June 12, 2020.

The continued trend left negative implications on freedom of expression in the absence of substantial assistance.

While CSOs are playing crucial roles from functioning as watchdogs and informing citizens about their rights and entitlement to improving service delivery and development projects, the surge of Covid-19 pandemic has exposed CSOs to financial problems. Many lesser-funded CSOs with little support from the government and international community are now on the brink of collapse. To minimise the impact of the pandemic on the private sector, NGOs have requested the Afghan government to provide them with support through mechanisms such as tax adjustment.<sup>44</sup>

### **Political Environment**

At the political level, civil society activists and HRDs receive little support from the government apparatuses, which has been and continue to be one of their main challenges by affecting the enabling environment for civil society in Afghanistan. Over the last two decades, Afghanistan has reportedly been the most unfavourable environment for civil society and human rights activists.<sup>45</sup> Journalists, civil society activists, and HRDs have been under constant threat from Afghan officials, power-holders, MPs, influential leaders, illegal armed groups, mafias, and terrorist networks such as the Taliban and ISIS members. Amid the post-2014 security deterioration, there has been a dramatic decline in the civic space for human rights activists. According to a 2018 report by the EU, lack of support from the government, financial constraints, and conflict have been among the most pressing challenges civil society has faced.<sup>46</sup>

Given that freedom of expression has been a pivotal achievement of the last two decades, the growing threats against journalists, media, and civil society activists are jeopardising this gain. According to Afghan journalists, freedom of the press and

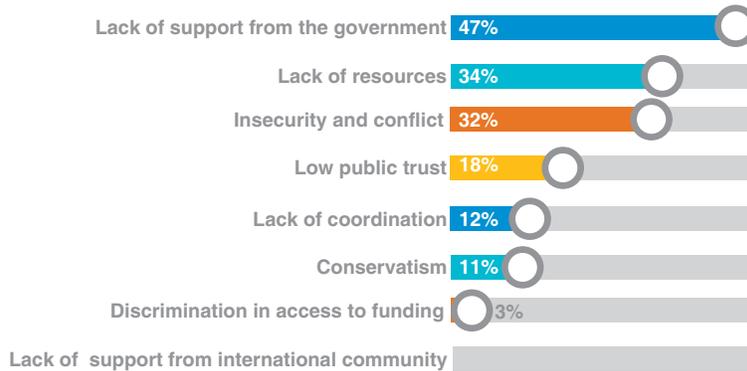
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<sup>44</sup> Tolo News, 'Afghan, EU Envoys Seeking Ways to Mitigate COVID-19 Risk', *Tolo News*, April 10, 2020, <https://bit.ly/2AxaByL>.

<sup>45</sup> Amnesty International, 'Afghanistan: Human Rights Defenders under Attack', *Amnesty International*, August 28, 2019, <https://bit.ly/3cZmXgb>.

<sup>46</sup> The European Union, *Afghanistan: EU Country Roadmap for Engagement with Civil Society* (Brussels: EU, August 26, 2018), <https://bit.ly/3eT8gws>.

Figure 1: Main Challenges to an Enabling Environment for Civil Society



Source: The European Union, *Afghanistan: EU Country Roadmap for Engagement with Civil Society* (Brussels: EU, August 26, 2018), <https://bit.ly/3eT8gws>.

expression is currently in a ‘downward spiral’ with increasing intimidation and violence from both state and non-state actors, lack of support from the Afghan government, and waning international assistance.<sup>47</sup> Shah Hussein Murtazavi, a former journalist and current advisor to President Ghani, once argued ‘in all our investigative reports, there is a minister, a governor, or an MP involved. All of whom have armed men. Some have 40 guards, and [for media with few or no guards] every story is a risk.’<sup>48</sup>

Many believe that the Afghan government is afraid of granting freedom of expression to their citizens because it can provide an enabling space to expose what the political leaders have been doing. For example, there will be the possibility of cases of corruption, land-grabbing, human rights abuse, and other malfeasance being aired to the public. According to one interviewee, who spoke on condition of anonymity:

As human rights defenders put forward sensitive topics and civil society functions as a ‘watchdog’ of the performance of

<sup>47</sup> Patricia Gossman, ‘Threats to Media Freedom in Afghanistan’, *Human Rights Watch*, January 21, 2015, <https://bit.ly/2YB4y48>.

<sup>48</sup> Patricia Gossman, ‘Afghanistan: Media under attack’, interview by Shah Hussain Murtazavi, *The Human Rights Watch*, January 21, 2015, <https://bit.ly/2YzSZdp>.

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the government which will challenge the system as a whole. The danger, of course, will come from anyone whose interests are threatened, including the government officials, religious, cultural, and political leaders.<sup>49</sup>

As mentioned earlier, during the rule of the NUG, several mass protests, including the so-called Tabasum Movement in 2015, Enlightenment Movement in 2016, and the Uprising for Change Movement in 2017, exposed the government's outright failure in managing the protests. In response, severe restrictive steps have been taken by the government to narrow down civic space for any potential protest in the future. As the first move, the government sought to re-draft the Assembly Law shortly after these movements. As a result of which, several limiting articles and clauses were added to the draft of the law. In an unprecedented move, the Afghan government banned WhatsApp and Telegram messaging services for 20 days in November 2017. The government labelled this as a security measure to stop the Taliban and other insurgent groups from these encrypted-messaging services.<sup>50</sup> This action further stirred growing concerns over censorship of freedom of expression in the country. These politically motivated measures saw pushback from CSOs and human rights activists. The WhatsApp ban was subsequently lifted, but the new draft of the Assembly Law is still pending before the parliament.

In 2009, Ali Mohaqiq Nasab, a magazine editor, was arrested by the Afghan police and sentenced to two years' imprisonment. The court in Kabul had convicted Nasab of blasphemy to Islam. Nasab had published articles, among others, that 'criticised the practice of punishing adultery with 100 lashes and argued that men and women should be considered as equals under Islamic law'.<sup>51</sup> Under the Afghan constitution, any sentiments and belief against the principles of Islam are strictly prohibited. In a similar case, in 2012,

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<sup>49</sup> Anonymous, one aid organization, interview by Abdul Rahman Yasa, April 21, 2020.

<sup>50</sup> BBC, 'Outcry as Afghanistan Moves to Ban WhatsApp and Telegram', *BBC*, November 4, 2017, <https://bbc.in/2vKfi5Q>.

<sup>51</sup> VOA, 'Afghan Journalist Given Two-Year Jail Sentence for Blasphemy', October 30, 2009, <https://bit.ly/2UE69VW>.

Zaman Ahmadi was sentenced to twenty years in prison for his unpublished article which was considered apostasy and blasphemy to the principles of Islam.<sup>52</sup> In a highly conservative society, it is difficult to develop and institutionalise freedom of expression.

Among other things, a deeply engrained culture of impunity in Afghanistan has crippled the country's already ineffective judiciary and legal system. Law enforcement bodies are either incapable of executing the law or unwilling to do so. Increased violent attacks and threats against HRDs, civil society activists, and journalists go un-investigated. As a result, self-censorship has become a means of survival, both literally and figuratively. Many journalists prefer not to report on sensitive topics, including corruption, land-grabbing, and human rights abuses, as a means to minimise safety risks.<sup>53</sup>

Reflecting the law-and-order situation, a 2018 CIVICUS assessment reported that the environment in Afghanistan remains risky for HRDs and CSOs, which was highlighted through the Universal Periodic Review (UPR) but the government has failed to fully implement its recommendations.<sup>54</sup> The failures include inability to ensure effective investigation and accountability of violations against journalists, threats against HRDs and media, and the dominant culture of impunity.<sup>55</sup> Consequently, civic space in Afghanistan is rated as 'repressed', reflecting the tremendous constraints placed on civil society's fundamental freedoms.<sup>56</sup>

## **Security Environment**

Aside from the regulatory and political constraints encountered by civil society, lack of security remains the key challenge for

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<sup>52</sup> Ezzatullah Mehrdad, 'Afghan Man Serves 20 Years Sentence in Prison for Writing an Article', *Insight Over*, November 7, 2019, <https://bit.ly/3e1HVMH>.

<sup>53</sup> Patricia Gossman, 'Threats to Media Freedom in Afghanistan', *Human Rights Watch*, January 21, 2015, <https://bit.ly/2YB4y48>.

<sup>54</sup> CIVICUS, *Joint Submission to the UN Universal Periodic Review 32nd Session of the UPR Working Group* (Kabul: CIVICUS: World Alliance for Citizen Participation, NGO in General Consultative Status with ECOSOC, Afghanistan Human Rights Organisation, People's Action for Change Organization, Civil Society and Human Rights Network, July 12, 2018), <https://bit.ly/3d1z1Oa>.

<sup>55</sup> *Ibid.*

<sup>56</sup> *Ibid.*

CSOs and HRDs operating in Afghanistan. For the past 20 years, and especially since 2014, Afghanistan has been one of the most dangerous countries in the world for civil society activists, HRDs, and aid workers. Constant threats, intimidation, harassment, killing, kidnapping, and other forms of violence are commonly faced by HRDs, especially female human rights activists in the country.<sup>57</sup> State and non-state actors, including government officials, MPs, powerbrokers, influential and religious leaders, the Taliban, and the ISIS have been the obstacles to enabling civic spaces.

Despite public promises to safeguard the HRDs, the government is the main culprit for threats, intimidation, and harassment of human rights activists. In June 2016, the Kabul police carried out a brutal crackdown on a civil strike by deploying heavy forces, killing several protesters.<sup>58</sup> As mentioned earlier, the NUG rule has been heavily criticised by the public due to their restrictive policies. To suppress civil protests, in a well-coordinated plan, the government positioned overnight shipping containers to block off all routes leading into Kabul city centre, preventing anyone from entering the area.<sup>59</sup>

In 2017, the Civil Society and Human Rights Network (CSHRN), in collaboration with a group of CSOs, compiled a shadow report on torture. Before submitting the report to the UN Committee against Torture (UN-CAT), CSHRN received threats via anonymous phone calls as the report included the names of senior government officials. One of the respondents in this research, who was involved in developing the UN-CAT shadow report, described the story as such:

For final approval, we had sent out the UN-CAT shadow report to the CSHRN members and partner organisations. Just after three hours, we got an anonymous call with a threat. 'If you do not take out the case described on page 22 [of the shadow report], the CSHRN office will not be safe anymore from

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<sup>57</sup> Amnesty International, *Defenceless Defenders: Afghanistan's Human Rights Community under Attack* (London: Amnesty International, 2019), 61, <https://bit.ly/37vbtQk>.

<sup>58</sup> Ibid.

<sup>59</sup> Tolo News, 'Government Shuts Down Kabul City, Blocks Roads with Containers', *Tolo News*, May 16, 2016, <https://bit.ly/3htKRDW>.

tomorrow onwards.’ The case on page 22 was a situation, in which a high government leader has been excused of torture in a local prison. After a long discussion, looking into different options to deal with this situation, we decided that the case shall be mentioned generally in the official report; however, the detailed shall be put as a confidential report to the UN-CAT commission in Geneva.<sup>60</sup>

In 2019, two human rights activists, Musa Mahmoudi and Ehsanullah Hamidi, were arrested by the Afghan intelligence agency (NDS). The two activists, who worked for the Logar Youth, Social and Civil Institution based in Logar province, had exposed sexual abuse of 546 children by teachers, headmasters, and local government officials.<sup>61</sup> Initially, the NDS denied any involvement in the arrest, but it later became known that both were in NDS custody. The NDS released both activists following the pressure from civil society, the Afghan Independent Human Rights Commission (AIHRC), and international human rights organisations. With the help of national and international human rights organisations, Mahmoudi and Hamidi were both evacuated to Uzbekistan due to perceived threats against them.

Following the intensification of insecurity, mainly after 2014, the country has turned into the most terrible hotspot for journalists and media. According to CIVICUS, more than 15 journalists were killed during 2018, and at least five others were shot dead in the first half of 2019.<sup>62</sup> On 31 May 2020, a car with employees of an Afghan private television network was attacked in Kabul, killing one journalist and the driver and injuring four others. Hours after the incident, ISIS claimed responsibility for the attack.<sup>63</sup> Afghan journalists face constant risks, threats, and attacks covering the

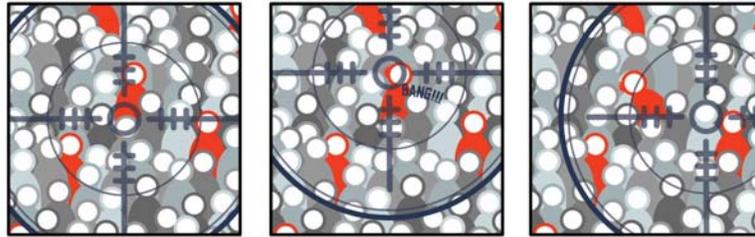
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<sup>60</sup> Anonymous, one aid organization, interview by Abdul Rahman Yasa, April 21, 2020.

<sup>61</sup> Ayesha Tanzeem, ‘Afghan Intelligence Admits Detaining Activists who Flagged Abuse’, *VOA*, November 26, 2019, <https://bit.ly/2XZlAc9>.

<sup>62</sup> CIVICUS, ‘Statement: Afghanistan’s Adoption of Universal Periodic Review on Human Rights’, *CIVICUS*, July 4, 2019, <https://bit.ly/2C7FtGD>.

<sup>63</sup> Aljazeera, ‘Journalist Killed in Kabul Bomb Blast Targeting TV Workers’, *Aljazeera*, May 31, 2020, <https://bit.ly/2UIabfT>.



country's long-running conflict. To continue their work, journalists are required to remain neutral in such circumstance; otherwise, they are bound to be threatened by different actors, mainly the Taliban and ISIS. Over the past years, the Taliban has repeatedly warned the Afghan media to cease 'broadcasting what they describe as government propaganda against the armed group'.<sup>64</sup> In 2016, the Taliban targeted a bus carrying employees of Tolo TV network, killing seven journalists. The group called the attack a retaliation against the propaganda in favour of the Afghan government and its international allies, which was broadcast by Tolo TV.<sup>65</sup>

Journalists and civil society activists are not the only ones targeted by such terrorist attacks. In July 2018, a suicide bombing targeted the Afghan Sikh and Hindu community in Jalalabad, which killed nineteen people, including Ottar Singh Khalsa, the only Sikh candidate, also respected by minority Hindus, for the upcoming parliamentary elections at the time.<sup>66</sup> Likewise, in 2019, Abdul Samad Amiri, a human rights activist working for the provincial office of the AIHRC based in Ghor province, was shot dead by the Taliban on his way home.<sup>67</sup>

In addition to insecurity, the existence of radical and old-fashioned views in society is also a major challenge, especially for women activists and journalists. For example, in western Afghanistan, Mawlawi Abdul Rahman Ansari, who casts himself

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<sup>64</sup> Aljazeera, 'Taliban Mistakenly Kidnaps Six Afghan Journalists', *Aljazeera*, September 2, 2019, <https://bit.ly/2B7oQdw>.

<sup>65</sup> Ibid.

<sup>66</sup> Gulabuddin Ghubar, 'Afghan Sikhs Lose Key Member of Their Community', *Tolo News*, July 2, 2018, <https://bit.ly/2YyAsOS>.

<sup>67</sup> Amnesty International, 'Afghanistan: Killing of Human Rights Defender is A War Crime', Amnesty International, September 5, 2019, <https://bit.ly/3d0Ljq1>.

as a religious figure, 'has been publicly opposing work of female journalists and calling to suppress women's presence in public'.<sup>68</sup> Against this background, working in Afghanistan for journalists, HRDs, and civil society activists remains highly precarious. The current situation, which is characterised by a high level of culture of impunity and a lack of a clear-cut protection mechanism with little support from the government, reflects an uncertain path for those working to ensure democratic values.

As of this writing, the Afghan government has been trying to kick off intra-Afghan peace negotiations in which all parties involved will work together to reach a political settlement to end the country's many bloody years of conflict. This has become a possibility following the US-Taliban agreement in Qatar early in 2020. The agreement left both sides with terms of conditions to meet to set the stage for the US military withdrawal from Afghanistan and for the Taliban to start negotiating with the Afghan government for a political settlement. Nevertheless, CSOs, HRDs, and minority groups are concerned about the decline in civic space and the loss of gains made over the past two decades as a result of the peace process that will pave the way for arrival of the Taliban and its direct engagement in public sphere.

According to CSOs and activists, the Taliban have a history of deep-rooted animosity with HRDs and civil society activists, mainly with female human rights defenders. During their rule in the late 1990s, the Taliban suppressed and tortured ethnoreligious minorities and civil activists.<sup>69</sup> Following the withdrawal of international security forces in 2014, the tension between the Afghan government and the Taliban escalated dramatically. As a result, the Taliban took control of Kunduz and Ghazni cities, and a large part of Farah province. During this time, 'all human rights offices in these provinces were looted and set on fire by the Taliban'.<sup>70</sup> In 2019, in a meeting held in Moscow, the Taliban harshly 'attacked women's rights activists for spreading immorality and

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<sup>68</sup> Zaman Sultani, South Asia Researcher for Amnesty International, interview by Abdul Rahman Yasa, April 20, 2020.

<sup>69</sup> Jawad Darwazian, Human Rights Researcher for Civil Society and Human Rights Network, interview by Abdul Rahman Yasa, April 29, 2020.

<sup>70</sup> Ibid.

indecenty'.<sup>71</sup> Such vilification has always been a common narrative against HRDs from the Taliban and other radical figures.

This shows that the Taliban has not changed its views on human rights issues since the group was pushed from power in 2001. If the hard gains of the past two decades are not supported and guaranteed, the disappearance of these achievements after the arrival of the Taliban in the aftermath of the peace deal does not seem unlikely. The group is still radical and dogmatic.

### **Conclusion**

This report highlighted that civic space for HRDs and civil society activists in Afghanistan has shrunk mainly after 2014. After the fall of the Taliban in 2001, there was growing hope for the creation and growth of conducive civic space for the work of civil society and human rights organisations. This hope emerged largely due to the financial and political support of the international community to CSOs in Afghanistan. During this period, the security situation gradually improved because of the strong presence of foreign troops. With the significant reduction in international troops in 2014, however, foreign aid to Afghanistan, and local CSOs, also decreased significantly. The withdrawal not only undermined the Afghan CSOs politically and economically but also worsened the security situation for them.

Amid the security deterioration and protracted political infighting in the NUG led by President Ghani and Chief Executive Abdullah Abdullah, supporting and protecting HRDs and civil society activists was not a priority for the government. In most sensitive cases, when human rights abuses, corruption, land-grabbing, or suppression of minorities have been put forward by HRDs and CSOs, they have been constantly threatened, harassed, and intimidated by both state and non-state actors.

Since 2014, despite some legal improvement such as the Access to Information Law which was passed by the government, there has been significant decline in the rights to freedom of

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<sup>71</sup> Emma Graham Harrison and Akhtar Mohammad Mokoi, 'The Taliban Took Years of My Life: The Afghan Women Living Under the Shadow of War', *The Guardian*, February 9, 2019, <https://bit.ly/3emkeik>.

assembly, freedom of expression, and freedom of the press. The government's undue interference in the work of CSOs, arbitrary arrest, harassment and intimidation of HRDs and activists by the government, MPs, influential leaders and powerbrokers, and the use of excessive force by security forces during peaceful protests reflect a shrinking of civic space during the NUG. Placing restrictions on social media such as Telegram and WhatsApp messaging services and re-drafting the Assembly law and NGOs law are all deliberate attempts made by the NUG to further close civic space. Contradictions and ambiguities in the country's enacted laws, including the constitution and its conflict with international laws, have restricted freedom of expression, on one hand, and undermined the Afghan government's international human rights obligations on the other.

Moreover, threats from various terrorist groups, including the Taliban and the ISIS, pose additional risks to shrinking civic space. As mentioned earlier, many HRDs and civil society activists are being intimidated and killed by armed groups and insurgents. Female human rights defenders have been vilified by the Taliban for promoting indecency and immorality, and journalists have been killed for perceived writings against the insurgent groups. Meanwhile, despite the government's pledge to protect HRDs and journalists from growing harassment, threats, and intimidation, absence of political will and lack of a protection mechanism expose them to threats more than ever.

Finally, the Afghan peace process with the Taliban is underway to find a political settlement to the current crisis. If the concerns and voices of CSOs, human rights organisations, and minority groups are not taken into account, the achievements of the last two decades may be compromised and will have been in vain.

## **Recommendations**

### *To the Afghan government*

- i. Take practical steps to ensure that all reported cases of killings, threats, harassment, and intimidations against HRDs by both state and non-state actors are thoroughly and

*Shrinking Civic Spaces for HRDs in Afghanistan*

- impartially investigated and perpetrators held accountable.
- ii. Remove all legal contradictions existing in various laws of the country and make them conform to all international treaties to which it is a signatory.
  - iii. Improve the enabling environment and develop an effective protection mechanism for HRDs in close consultations with all stakeholders, including CSOs and human rights organisations.
  - iv. Strengthen rule of law at all levels by fighting the culture of impunity.
  - v. Implement all the recommendations the country receives on the circumstances of HRDs provided by the UN Special Rapporteur and other relevant reports.

*To civil society*

- i. Request and support the government in establishing a protection mechanism for HRDs.
- ii. Develop an income-generating action plan to diversify income sources and reduce donor dependency.
- iii. Strengthen intra-CSOs communication to work closely to improve effectiveness of their activities and advocacy efforts through a clear mechanism.
- iv. Work to influence policy-makers and those in power to prevent the squeeze on freedom of expression, the press, and assembly.

*To the international community*

- i. Encourage the Afghan government to change its repressive approach to prevent the detention, intimidation, and harassment of HRDs in the country.
- ii. Pressure the Afghan government to ensure the safety of HRDs by establishing protection mechanism with strong legal framework.
- iii. Empower and provide continued financial and political support to Afghan CSOs.
- iv. Switch from the current project-based approach to a more programme-oriented approach.

## Annex

### Assessment of Civic Space in Afghanistan: Survey Findings

The online survey of civic space 2020 in Afghanistan includes a sample of 17 civil society activities and CSOs members. Of which, two respondents were female and the remaining 15 were male all aged between 20 to 50 years old with 11 participants from the minority groups. The survey was shared with respondents residing in Kabul, Mazar-e-Sharif and Herat.

This section of the survey on the assessment of civil liberties showed that 35.3 per cent of the respondents believed that there was discrepancy in the enjoyment of civil liberties across different social groups, in terms of language, caste, ethnicity, race, region, and religion. The survey also showed that 41.2 per cent of the respondents strongly disagreed that poor people enjoyed the same level of civil liberties as rich people in the country. In addition, 52.9 per cent of the respondents strongly disagreed that men, women, and sexual minorities enjoyed the same degree of civil liberties, implying that one’s sexual orientation and gender identity could impact their enjoyment of civil liberties.

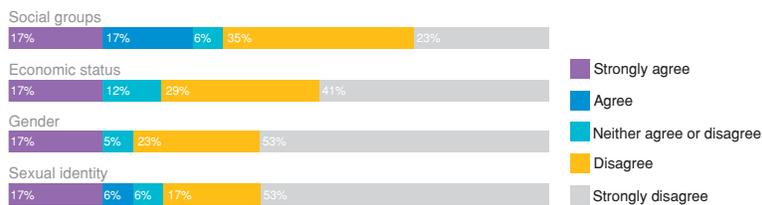


Figure 1: Civil Liberties Enjoyed Equally by Different Groups

On whether the state has put restrictions on registration and operation of civil societies, the responses were rather mixed. A total of 52 per cent of the respondents believed that the state allowed different groups, including people from marginalised communities to form and register an organisation, while 18 per cent of the respondents believed otherwise and further confirmed that the state unduly interfered in the work of CSOs to control

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them accordingly. Moreover, the survey showed that 41.2 per cent of the respondents viewed an increase in attacks against human rights defenders and civil society activists in Afghanistan.

According to the survey, 64.7 per cent of the respondents believed that the media has a critical role in representing political views across the country. However, 47.1 per cent of the respondents agreed that media workers have faced threats, intimidation, harassment, and even killing by state and non-state

All groups have been allowed to form and register an association in order to advance collective interests

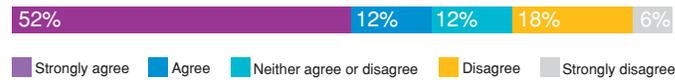


Figure 2: Association Registration and Access to Information

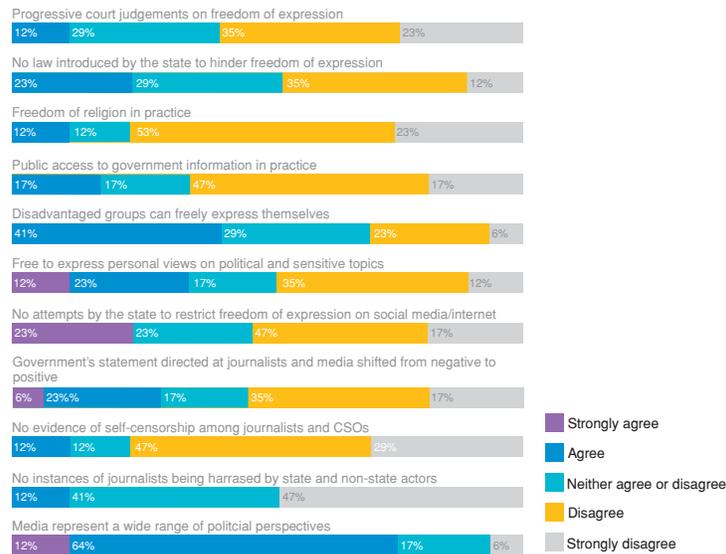


Figure 3: Freedom of Expression

actors, especially those who are reporting on sensitive subjects, for whom the situation remains highly precarious. Public access to government information remains a serious issue with 47.1 per cent of the responses indicating that media workers, civil society

activists, and other independent researchers are constantly facing difficulties in getting required information from public institutions.

Furthermore, 47.1 per cent of the respondents agree that there is freedom of assembly guaranteed in law in the country. According to the survey, 58.8 per cent of the respondents agree that the state has allowed peaceful protests. However, 47.1 per cent believed that the security forces have used physical violence to suppress the demonstrators. In addition, 35.3 per cent of the respondents agreed that protesters in the country faced arbitrary or illegal arrests during the demonstrations by the security forces.

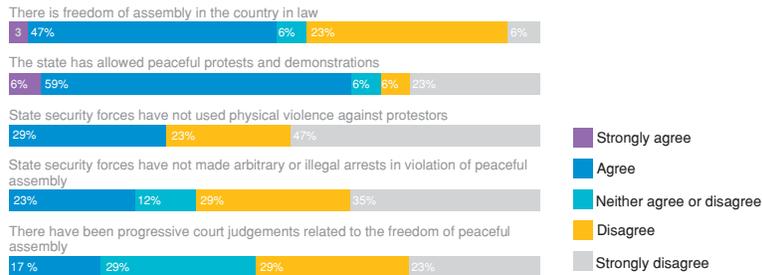


Figure 4: Freedom of Peaceful Assembly

# Bangladesh: Civic Space and Minority Rights

Zakir Hossain, S.M. Masum Billah  
& Monjurul Islam

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## Introduction

### Context

‘Civic space is the politico-legal and socio-cultural environment which enables citizens to come closer, share their interests and concerns, and act individually and collectively to influence and shape policy-making.’<sup>1</sup> It encourages people to be aware of and pursue multiple points of view. Civic space works mainly on the basis of certain human rights principles—freedom of assembly, right to peaceful protest, freedom of expression, and access to information. ‘A dynamic and plural civic space ensures that governing bodies take into account interests, needs, and concerns of society at large. On the contrary, when civic space shrinks, governments and institutions are less likely to be responsive to citizens’ requests’.<sup>2</sup> In this context, civic space in Bangladesh has been shrinking increasingly, with minority rights activists, in particular, facing scrutiny and backlash from the government.

When Bangladesh emerged as an independent country in 1971, civil society had played a pivotal role in the country’s liberation. Among the reasons that triggered the movement for the country’s

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<sup>1</sup> ‘What is Civic Space’, Civic Space Watch, accessed September 2020, <https://civicspacewatch.eu/what-is-civic-space>.

<sup>2</sup> ‘Space to Be Heard: Mobilizing the Power of People to Reshape Civic Space’, Oxfam Briefing Note, accessed July 2020, <https://oxfamilibrary.openrepository.com/bitstream/handle/10546/620523/bn-space-to-be-heard-civic-space-250718-en.pdf>.

liberation was the closing civic space for Bengalis; their voice was throttled by the then Central Government of Pakistan. The 24 years under the Pakistani regime (1947-1971) was marked by a history of oppression of the Bengalis, and it was expected that after liberation, the Bengali people would be able to exercise their democratic rights freely. However, a perusal of the post-independence period, from 1971 to the present, reveals that the culture of rejection of dissenting views is still prevalent and has been constantly affecting the lives of Bengalis. Political turmoil, military coups and enactment of unpopular laws have all aimed at suppressing dissent in the country since independence.

In the first few post-independence years, the insertion of provisions in the Constitution that suspended fundamental rights during emergencies,<sup>3</sup> the introduction of preventive detention laws,<sup>4</sup> and the formation of a single political party, coupled with limiting the number of newspapers circulated in the country,<sup>5</sup> are some ways in which attempts were made to restrict civic space. However, it has also been posited that the early years of independence necessitated such steps in order to restore stability in the country.<sup>6</sup> After the 1975 assassination of President Bangabandhu Sheikh Mujibur Rahman, widely hailed as the Father of the Nation, the country went into the hands of military rulers. For the 15 years that followed, the country was governed by a military-bureaucratic alliance that foiled democratic institutions. The founding principles of the State outlined in the Constitution—democracy, nationalism, secularism, and socialism—were compromised. In particular, the principles of absolute faith and trust to the Almighty were inserted in the place of secularism and the Islamic customary expression ‘Bismillah Ar Rahman Ar Rahim’ inserted at the outset of the Constitution.<sup>7</sup>

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<sup>3</sup> The Constitution (Second Amendment) Act 1973.

<sup>4</sup> Special Powers Act 1974 made in pursuance of art 33 of the Constitution of Bangladesh that empower the government to detain a person on the ground of prejudicial act jeopardising state’s security, public order and harmony.

<sup>5</sup> The Constitution (Fourth Amendment) Act 1974.

<sup>6</sup> Nurul Islam, *The Making of a Nation, Bangladesh: An Economists Tale* (University Press Limited, 2003).

<sup>7</sup> Habibur Hoque Khandoker, ‘State and Secularism in Bangladesh’ in *State and Secularism: Perspectives from Asia*, edited by Michael Heng Siam-Heng and Ten Chiew Lieu (Singapore: World Scientific, 2010).

After the fall of General Hussain Ershad from power in 1990, parliamentary democracy was restored through a general election in 1991. However, even the post-1991 period has seen an ebb and flow of attempts made to continue to restrict civic space. The country saw the rise of Islam-based politics with the Bangladesh Nationalist Party (BNP)-Jamaat-e-Islami alliance coming to power in 2001, with the religious minority communities, mainly Hindus, facing violence.<sup>8</sup>

Since 2004, there has been a rise of religious militancy, and recurrent attacks on secular thinkers, as well as enactment of suppressive laws that go against the spirit of the Constitution and human rights norms. The current ruling party, the Awami League, that also led the country's independence movement, has been in power since 2009, having won the elections three times—in 2009, 2014 and 2018—although the credibility of the elections held in 2014 and 2018 has been questioned.<sup>9</sup> During the 2009-2014 period, the government enacted some progressive legislation, including those aimed at protecting the right to information, the formation of a National Human Rights Commission (NHRC), restoration of original constitutional principles and so on. The enactment of these laws had been widely celebrated. However, the post-2014 environment has been marked by political vandalism and destruction, including enforced disappearances and apprehension of opposition political figures.<sup>10</sup> The misuse of social network platforms by the vested groups and terrorists led to the formulation of national broadcasting policies, regulation of the activities of non-state actors, and the enactment of Digital Security Act 2018. While the need for such steps can hardly be overemphasised, the

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<sup>8</sup> Anbarasan Ethirajan, 'Bangladesh "persecution" panel reports on 2001 violence', *BBC News*, December 2, 2011, <https://www.bbc.com/news/world-asia-15987644>; 'Bangladesh: Situation of Hindus following the 1 October 2001 election, particularly in the Moulvibazar district; government response to violence against Hindus (1 October 2001–March 2002)' Refworld, accessed October 2020, <https://www.refworld.org/docid/3df4be12c.html>.

<sup>9</sup> Jaynal Abedin, 'Legitimacy Crisis in Bangladesh: A Case Study of the 10<sup>th</sup> General Election' *European Journal of Political Science Studies* 3, no. 2 (2020).

<sup>10</sup> Mirza Hassan and Sohela Nazneen, 'Violence and the Breakdown of the Political Settlement: An Uncertain Future for Bangladesh' *Conflict, Security and Development* 17, no. 3 (2017): 205.

legislative and administrative steps have taken an overall toll on the fundamental human rights situation in the country. On many occasions, the new legislative measures have been useful in addressing the rumours, militancy, online harassment, etc. But they have substantially curbed the liberty of citizens and groups, in particular, those working for the protection and promotion of minority rights have been affected severely, including those focused on religious minorities, indigenous peoples, refugees, LGBTQ+ communities, and labour rights.<sup>11</sup>

Media reports in the last few years suggest that dissenting political opinions expressed on the internet have been met with censure in the name of suppressing extremism, rumours, terrorism and subversive state activities. Political views and journalistic reports even hinting toward criticism of the government, and human rights activism have all been under scrutiny.<sup>12</sup> Judicial independence in the country is hindered by the executive organ of the state, owing to questionable appointment procedures among other matters, as seen by the controversial exit of the former Chief Justice of Bangladesh, S.K. Sinha.<sup>13</sup> There is an adverse environment for civil society organisations and human rights defenders in Bangladesh. According to media reports, a total of 1,417 cases on cybercrime charges were filed with the police between 2012 and mid-2017. A total of 1492 people were arrested in Dhaka alone in these years, with 490 cases still under investigation.<sup>14</sup>

While the major opposition political parties have been struggling to exercise freedom of expression and assembly and protest, the other political parties joining the alliance led by the ruling party have been complicit in the government's actions. Civil

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<sup>11</sup> Human Rights Watch, 'Bangladesh: Repeal Abusive Law Used in Crackdown on Critics', July 01, 2020, <https://www.hrw.org/news/2020/07/01/bangladesh-repeal-abusive-law-used-crackdown-critics>.

<sup>12</sup> Ibid.

<sup>13</sup> SM Masum Billah 'Oil and Water Cannot Mix: The Separation of Powers in Bangladesh and the *Masdar Hossain* Legacy' Paper presented at the symposium on Twelve Years of Judicial Separation: Achievements and Challenges, Bangladesh Institute of Law and International Affairs, 28 December 2019.

<sup>14</sup> A. R. Rabbi, 'Number of ICT Cases on the Rise Again', *Dhaka Tribune*, August 10, 2018, 2020, <https://www.dhakatribune.com/bangladesh/law-rights/2018/08/10/number-of-ict-cases-on-the-rise-again>.

society organisations (CSO), human rights defenders and activists have been facing backlash.<sup>15</sup> Freedom of peaceful assembly and association are often denied and met with suppression. In the face of severe government control over civic space, most CSOs and media have adopted a ‘see-no-evil’ strategy to survive,<sup>16</sup> while the few remaining independent entities who have tried to report on the widespread human rights violations and abuse of democratic values in the country have experienced undue pressure from the authorities.<sup>17</sup>

This is the context in which the state of the civic space in Bangladesh at the moment needs to be understood, in particular, the space for minority groups. This report examines the situation of civic space in the country for seven minority groups in particular, Hindus, Ahmadiya Muslims, indigenous communities, Dalits, linguistic minorities, i.e., Biharis, the LGBTIQ+ community, and Rohingya refugees.

### **Objectives**

The overall objective of the study is to explore the shrinking of civic space in Bangladesh and analyse the trends and factors affecting civic space in the country, with particular focus on minority groups.

More specifically, the study aims to:

- Explore the challenges faced by minority groups;
- Analyse the situation of civic space in Bangladesh, with particular focus on minority groups, and explore the factors affecting civic space in the country;
- Examine the legislative framework relating to civic space vis-à-vis minorities; and
- Provide recommendations to widen the civic space for safe-

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<sup>15</sup> ‘Bangladesh Events of 2019’, Human Rights Watch, accessed August 2020, <https://www.hrw.org/world-report/2020/country-chapters/bangladesh>.

<sup>16</sup> ‘The Compromised State of Civil Society in Bangladesh, 2018’, Reimagining Democracy, CIVICUS, accessed March 10, 2020, <https://www.civicus.org/index.php/re-imagining-democracy/stories-from-the-frontlines/3342-the-compromised-state-of-civil-society-in-bangladesh>.

<sup>17</sup> Human Rights Watch, ‘Bangladesh: Events of 2019’, accessed March 10, 2020, <https://www.hrw.org/world-report/2020/country-chapters/bangladesh>.

guarding minority rights and the protection and promotion of human rights in general.

### **Methodology**

This report relies on both primary and secondary data. Reports from government and private sources, published and unpublished research documents, seminar/conference papers and proceedings, articles, presentations, digital documents available in social media and daily newspapers have been consulted to gather data and information. Primary information was collected through direct interviews with representatives of the minority groups mentioned earlier. Given the ongoing Covid-19 pandemic and the restrictions on physical movement, data was also collected through online interactions, virtual meetings, and phone interviews.

## **Legal Regime and Civic Space**

### **Constitutional Dispensation**

#### ***Secularism and State Religion Run in Parallel***

Bangladesh adopted its Constitution in 1972, nine months after its emergence as an independent country. The 1956 Constitution of Pakistan had declared the country to be an ‘Islamic Republic’,<sup>18</sup> ignoring the distinctive Bengali linguistic and cultural orientation of the people of East Pakistan (now Bangladesh). This enabled the Pakistani rulers to suppress the Bengalis on the pretext of preserving Muslim unity. Learning from this, the Bangladesh constitution incorporated ‘secularism’ as one of the guiding principles, in line with what the founding President, Bangabandhu Sheikh Mujibur Rahman, had envisioned—an independent country free from religious bigotry.<sup>19</sup> As a reflection of his political vision,

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<sup>18</sup> Under this ‘Islamic Republic’ concept, people were asked to order their life according to Quran and Sunnah, the post of the head of the state was reserved for Muslims, the legislature was obliged not to make any law inconsistent with Islamic law, *riba* (interest) in the economic system was abolished, the state was obliged to develop a healthy relationship with Muslim countries and so on.

<sup>19</sup> To learn more about Bangabandhu’s secular political philosophy see: S.M. Rahman, *The Unfinished Memoirs* (London: Penguin Books, 2012).

principles of nationalism, secularism, democracy and socialism were adopted as the four basic pillars of the Constitution.<sup>20</sup> Article 8 of the constitution defines them as ‘the fundamental principles of state policy’.<sup>21</sup>

Article 12 of the 1972 Constitution defined secularism as the freedom to practise one’s own religion and non-use of religion towards political ends. Similarly, Article 38 allowed citizens to form associations or unions, with the exception of those that could: i) destroy the religious, social and communal harmony among citizens; ii) create discrimination among citizens on the ground of religion, race, caste, sex, place of birth or language; iii) organise terrorist acts or militant activities against the country or the citizens of any other country; and iv) thwart the objectives of the constitution. Article 41 guaranteed freedom of religion subject to law, public order and morality.<sup>22</sup> Articles 12, 38 and 41 read together conveyed the meaning of secularism as maintaining neutrality amongst religions and eliminating discrimination based on religion.

Until 1975, the Constitution did not contain any religious words, nor did it have the provision of ‘Islam as state religion’. However, religious utterings and citations from religious books in state activities and rituals were visible. For example, the parliament convened with recitations of verses from the *Quran* and the state-owned television started its broadcast with recitations from the religious books of Muslims, Hindus, and Buddhists.<sup>23</sup>

After 1975, once the military regime was in place, constitutional theocracy became triumphant and religious expressions started

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20 The Constitution (Fifteenth Amendment) Act 2011 (Act XIV of 2011), s 3.

21 The Constitution of the People’s Republic of Bangladesh, art 8.

22 Further, the proviso to Article 41 guaranteed an individual the right to refuse to practise a religion or to be compelled to be educated in a religion other than their own. The provision does not say whether a person has the right ‘not to believe’ in any religion. This brings the important question about the extent to which an alleged ‘non-believer’ could be condemned on the ground of offending ‘religious feelings’, ‘public order’ or the like. There is constitutional obscurity in this particular aspect of religious freedom.

23 Amena Mohsin, ‘Religion, Politics and Security: The Case of Bangladesh’ in Satu Limaye, Robert Wirsing and Mohan Malik (eds), *Religious Radicalism and Security in South Asia* (Hawaii: Asia-Pacific Center for Security Studies, 2004) at 468.

to get a place in the constitutional framework. Much like during the Pakistani regime, the successive military rulers in Bangladesh began the Islamisation process in the Constitution. In 1976, Islamic religious expressions ‘Allah is almighty’ were inserted in the Constitution by General Ziaur Rahman through martial law proclamation.<sup>24</sup> The four principles of the Constitution, including secularism, were annulled, and Article 12 defining secularism and the proviso to Article 38, prohibiting religion-based politics, repealed.<sup>25</sup>

Through the fifth Amendment of the Constitution, General Zia also allowed the re-emergence of religion-based political parties earlier prohibited for their controversial role in the Bangladesh Liberation War.<sup>26</sup> The Constitution, thus, lost its secular character as religious extremism started to rise at the behest of the so-called multi-party military democracy with its sympathy to ‘political Islam’. General Zia professed a brand of ‘Bangladeshi’ nationalism defined by his newly formed political party, the BNP, as a corollary of Islamism. As a result, the secularism-oriented ‘Bengali’ nationalism, that triggered the movement to attain separate nationhood, ended in disillusionment.

The Ershad government, which came to power through a military coup in 1982, declared Islam as the ‘state religion’ with the 8<sup>th</sup> amendment of the constitution in 1988.<sup>27</sup> In 1991, democracy was restored after the fall of General Ershad. Six amendments have

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<sup>24</sup> Political analysts in their commentaries term this Islam as ‘Political Islam’. Thus, Professor Ali Riaz of Illinois State University writes, ‘Their (Zia and Ershad) goal was to construct a ‘statist Islam’ through the production of an emergent Islamic discourse that, it was hoped, marginalised all other discourses, including that of democracy.’ See, A. Riaz, *Ali God Willing: The Politics of Islamism in Bangladesh* (New York: Rowman and Littlefield Publishers, 2004), 139.

<sup>25</sup> Proclamation Order No 1 of 1977; Second Proclamation Order No IV of 1978.

<sup>26</sup> The Constitution (Fifth Amendment Act 1979) (Act 1 of 1979). The fifth Amendment added one new provision to Article 25 which ran as follows: ‘The state shall endeavour to consolidate, preserve and strengthened the fraternal relations among Muslim countries based on Islamic solidarity.’

<sup>27</sup> The Constitution of the People’s Republic of Bangladesh, article 2A. The provision read as follows: ‘The State Religion—The state religion of the Republic is Islam, but other religions may be practised in peace and harmony in the Republic.’



been made to the Constitution since, dealing with various aspects of governance, election, justice and representation, but no amendment has been made to restore secularism in the country. Politics over the last two decades has been largely conditioned by the role of pro-religious parties like the Bangladesh Nationalist Party (BNP) and their ally, the Jamaat-e-Islami.<sup>28</sup> The 2001-2006 term led by the alliance of two parties saw the rise of Islamic militancy throughout the country. Their main opponent, the Awami League, was able to return to power in 2008, but not without certain concessions made to the role of religion in politics.

In 2009, the fifth amendment was declared unconstitutional.<sup>29</sup> One of the implications of the decision was that it revived the principles of secularism. To make the findings of the Supreme Court more concrete and meaningful and to adjust it to the present-day political reality, the fifteenth amendment to the Constitution was enacted in 2011, which reformulated certain religious expressions to give coherent meaning to secularism under the new political reality. For instance, Islam was retained as the state religion, but

<sup>28</sup> The BNP-led coalition was in power in two terms: 1991-1996 and 2001-2006.

<sup>29</sup> *Bangladesh Italian Marble Works Ltd v. Government of Bangladesh & Others* [2006] 14 BLT (Special) (HCD) 1. On appeal, ABM Khairul Haque's illuminating judgment was affirmed by the Appellate Division with certain modifications.

there was the guarantee of equal status and equal rights to followers of other religions as well.<sup>30</sup> Thus, the present Constitution pledges to establish a secular society without impairing the presence of religion in the national life of Bangladesh. Critics point out that with Islam as the state-backed religion, a truly secular society cannot be established.

***Principle of Non-Discrimination***

Non-discrimination is one of the fundamental tenets of the Bangladesh Constitution. Article 27 of provides that all citizens are equal before the law and are entitled to equal protection of the law. The Constitution has incorporated both general and particular non-discriminatory clauses. Article 28 of the Constitution in general sets out the principle of non-discrimination by providing that no citizen shall be discriminated on the grounds of religion, race, caste, sex or place of birth. The Constitution, in particular, also states that that no citizen will be subjected to any disability, liability, restriction or condition with regard to access to any place of public entertainment or resort or admission to any educational institution on grounds of religion, race, caste, sex or place of birth.

***Freedom of Expression and Press***

Article 39 of the Constitution of the People’s Republic of Bangladesh ensures freedom of expression and press in a qualified manner. Article 39 subjects this freedom to certain restrictions such as security of the state; friendly relations with foreign states, public order, decency or morality, among others. These grounds are vague and subject to interpretation. Moreover, under Articles 141A-141C, the fundamental rights of citizens can be abrogated. The Constitution also gives power to the state to make laws limiting freedom of expression on the grounds mentioned in Article 39.

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<sup>30</sup> Replacing the old provision (article 2A) under the eighth Amendment, it now reads: ‘The State Religion—the state religion of the Republic is Islam, but the State shall ensure equal status and equal right in the practice of the Hindu, Buddhist, Christian and other religion.’

### **Statutory Regime**

Many of the existing statutory laws of Bangladesh are an antithetical to freedom of expression and civic space. For instance, the Penal Code of 1860 prohibits ‘deliberate and malicious acts intended to outrage religious feelings of any class by insulting its religion or religious beliefs’ and ‘uttering words, etc, with deliberate intent to wound religious feelings’. These are punishable with fines, or up to two years in prison, or both.<sup>31</sup> Another example is the widely debated Digital Security Act (DSA) of 2018, which criminalises acts in the digital space. Civil rights organisations, however, were quick to point out that many of the DSA’s provisions limit civil rights, including freedom of expression and freedom of religion or belief. While Bangladesh’s Penal Code punishes blasphemy with up to two years in prison and a fine, the DSA also criminalises blasphemy as a non-bailable offence and imposes harsher penalties. Section 28 of the DSA prohibits ‘publication, broadcast of anything in any website or in any electronic layout that hampers the sentiment or values’. It further stipulates that any person or group will be considered to have committed a criminal offence under this extremely vague provision if they ‘intentionally or knowingly, with the aim of hurting religious sentiments or values or with the goal to provoke, post or broadcast anything by means of any internet site or any electronic layout which hurts religious sentiment’. The DSA imposes a punishment of up to seven years in prison for the offence committed for the first time and up to 10 years for repeated offences of hurting religious sentiments.

### **International Human Rights Law and Bangladesh’s Obligation**

Bangladesh has ratified several international treaties that protect civil and political rights, right to freedom of speech, expression and opinions, including the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Elimination of All Forms of Racial Discrimination (CERD), the Convention on the Rights of the Child (CRC), and the Convention on the Rights of Persons with Disabilities (CRPD). In several reports, various

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<sup>31</sup> Penal Code 1860 (Act No. XLV of 1860), Government of the People’s Republic of Bangladesh, <http://bdlaws.minlaw.gov.bd/act-11.html>.

international human rights bodies have drawn Bangladesh's attention to pertinent issues with relevance to civic rights and freedom of expression. For instance, an Anti-Discrimination Bill in the process of enactment needs to address caste-based discrimination, decriminalisation of homosexuality, and harassment and stigmatisation of the LGBTIQ+ community. There is also international concern about the high rate of extrajudicial killings and enforced disappearances in Bangladesh. The accountability measures in responding to the issue are inadequate and need to be addressed. The Special Powers Act 1974 enables the continuation of the practice of preventive detention, which has been used by the state to suppress political opponents. Administrative authorities enjoy unfettered power granted under the Act to arrest and detain a person involved in alleged prejudicial activities. The practice of custodial death continues despite the enactment of the Torture and Custodial Death (Prevention) Act 2013.

## **Civic Space: The State of the Minorities**

### **Hindus**

Bangladesh has a population of 163 million people.<sup>32</sup> Around 98 per cent of the population identifies themselves as Bengali,<sup>33</sup> and Muslims constitute the majority in terms of religion, with Hinduism, Christianity and Buddhism being the other major religions.<sup>34</sup> Although its Constitution asserts that Bangladesh is a

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<sup>32</sup> 'Bangladesh Population 2020', *World Population Review*, accessed March 25, 2020, <http://worldpopulationreview.com/countries/bangladesh-population>.

<sup>33</sup> Although the remaining two per cent makes up a fraction of the population, there are at least 27 other distinct ethnic groups in Bangladesh formally recognised by the government. Independent researchers, however, claim that the number is closer to 75. See 'Bangladesh Ethnic Groups', Study.com, accessed August 15, 2020, <https://study.com/academy/lesson/bangladesh-ethnic-groups.html>. The groups prefer to identify themselves as *adivasis* (indigenous communities), the Constitution of Bangladesh, however, uses the phrase 'tribes, minor races, ethnic sects and communities' to refer them. See, The Constitution of the People's Republic of Bangladesh, Article 23A.

<sup>34</sup> The religious composition is: Muslims: 89.1%, Hindus: 10% and Others (Buddhist, Christians): 0.9%. Also see: A. Riaz, 'The Politics of Islamisation in Bangladesh' in *Religion and Politics in South Asia*, edited by A. Riaz (Abingdon: Routledge, 2010), 47.

secular nation, Islam remains the 'state religion'. Partly because of that, despite having equal rights and status constitutionally, religious minorities in Bangladesh face discrimination, harassment and atrocity. The declining Hindu population in the country can be linked to harassment and physical attacks on them; while Hindus accounted for 23 per cent of the total population in 1971, the proportion is near 8 per cent now.<sup>35</sup> Moreover, successive governments have failed to adequately respond to the violence against the Hindu minority.<sup>36</sup> A report of the UK Home Office states that 'political parties do use religiously divisive language and, on occasion, act in ways that exacerbate rather than diminish religious and communal tensions. Violent assaults on religious minority communities are often not investigated or prosecuted.'<sup>37</sup>

While the aforementioned circumstances render religious minorities voiceless, the recent trend of violence against them on social media has made them all the more vulnerable. The October 2019 incident where an attack on Hindu minorities took place in Bhola district following the alleged use of hate speech in social media is a telling illustration.<sup>38</sup> The violence erupted when some anti-religious messages, allegedly posted by a Hindu youth, spread online even though the youth had already reported that his social media account had been hacked. This incident follows a pattern of young individuals from religious minorities reporting that their social media accounts have been hacked, followed by incriminating religious messages being posted from their account, leading to widespread violence against the minority community.

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<sup>35</sup> Press Statement, 'Preliminary findings of visit to Bangladesh by Heiner Bielefeldt, Special Rapporteur on freedom of religion or belief', United Nations Human Rights Office of the High Commissioner, September 9, 2015, <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=16399&LangID=E>.

<sup>36</sup> 'Freedom in the World 2015: Bangladesh', Freedom House, accessed March 10, 2020, <https://freedomhouse.org/report/freedomworld/2015/bangladesh>, archived at <https://perma.cc/QC37-SA5V>.

<sup>37</sup> A risk assessment of country-of-origin information (COI) by the UK Home Office, [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/514400/CIG.Bangladesh](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/514400/CIG.Bangladesh).

<sup>38</sup> Star Report, '4 Killed, 100 Injured', *The Daily Star*, October 21, 2019, <https://www.thedailystar.net/frontpage/clash-in-bhola-4-killed-100-injured-1816540>.



### Ahmadiya Muslims

Bangladesh's Ahmadiya Muslim community is particularly vulnerable and faces increased harassment as Islamist groups claim that their practice of the religion is not endorsed by Islam. Islamist groups have also been lobbying the government to declare Ahmadiyas to be non-Muslim.<sup>39</sup> There is evidence that the police is keeping Ahmadiyas under surveillance, including by approaching members of the community outside of their mosques to collect personal details.<sup>40</sup>

Ahmadiyas in Panchagar district came under attack in February 2019 when they were arranging an annual conference.<sup>41</sup> Three Islamist organisations had jointly urged the government to ban the meeting and implement their demand to declare Ahmadiyas non-Muslim. When the conference proceeded, around 500 people from Islamist groups attacked the Ahmednagar village, vandalised houses, and looted the Ahmadiyas while the police failed to intervene. Ahmadiyas faced a similar attack in September 2019 when an Ahmadiya mosque under construction in Netrakona town was vandalised by Islamist groups.<sup>42</sup> Around 400 people, mainly students from nearby madrassas, allegedly destroyed the mosque with homemade weapons despite the presence of the

<sup>39</sup> S. Uttom and R.R. Rozario, 'Cleric demands Bangladesh Ahmadi be declared non-Muslim', *UCA News*, April 18, 2019, <https://www.ucanews.com/news/cleric-demands-bangladesh-ahmadis-be-declared-non-muslim/85004>.

<sup>40</sup> 'General Briefing Bangladesh', CSW: Everyone Free to Believe, accessed August 22, 2020, <https://www.csw.org.uk/2020/05/01/report/4636/article.htm>.

<sup>41</sup> S.R. Sazzad, '50 Ahmadiyas Injured in Co-ordinated Attack on the Community in Panchagarh', *Dhaka Tribune*, February 13, 2019, <https://www.dhakatribune.com/bangladesh/nation/2019/02/13/sunnis-attack-Ahmadiyas-in-panchagarh>.

<sup>42</sup> *New Age*, 'Under-construction Ahmadiya Mosque Vandalised in Netrakona', *New Age*, September 15, 2019, <https://www.newagebd.net/article/84607/under-construction-Ahmadiya-mosque-vandalised-in-netrakona>.

police. In January 2020, a mosque of the Ahmadiyas was attacked in Brahminbaria district when a group of madrassa students were barred from entering a religious programme in the Ahmadiya mosque. The following day, several locals and the madrassa students held a procession to demand passing a law declaring Ahmadiyas to be non-Muslim.<sup>43</sup>

In recent years, the trend of spreading hatred through YouTube videos has been on the rise. Religious extremist groups use the social media and the 'waz-mahfil', the religious gatherings where Islamic scholars discuss various aspect of Islam, to spread communalism, religious fanaticism, hatred against women, and to encourage militancy and anti-state, anti-democracy and anti-cultural sentiment. They have openly denounced non-Muslim faiths, accused religious minorities of destroying Islamic values, and accused Christians of forcing Muslims to convert.<sup>44</sup> They are also attempting to influence the government to enact policies to exclude texts written by non-Muslims writers from the national curriculum.<sup>45</sup>

### **Dalits**

Caste and descent-based discrimination in Bangladesh is a complex, multifaceted issue as 'it results from a variety of often overlapping factors, including caste, religion, place of birth or families/ descendants' place of birth and occupation'.<sup>46</sup> Though the reality of caste discrimination in Bangladesh is concealed by silence, even outright denial, the Dalit community experiences multiple forms of social, political and economic discrimination. Their predicament, enabled by tacit acceptance from the government, is in violation

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<sup>43</sup> New Age, 'Ahmadiya Mosque, Houses Attacked in Brahmanbaria: Islamists Demand Declaring them Non-Muslims', *New Age*, January 16, 2020, <https://www.newagebd.net/article/96747/Ahmadiya-mosque-houses-attacked-in-brahmanbaria>.

<sup>44</sup> Staff correspondent, '15 named for fanning communal tension, militancy thru Waz', *The Daily Observer*, April 7, 2019, <https://www.observerbd.com/news.php?id=192164>.

<sup>45</sup> DW, 'Bangladesh's secular activists concerned about textbook changes', undated, <https://www.dw.com/en/bangladeshs-secular-activists-concerned-about-textbook-changes/a-37398705>.

<sup>46</sup> M. Islam, and A. Parvez, *Dalit Initiatives in Bangladesh* (Nagorik Uddyog and Bangladesh Dalit and Excluded Rights Movement: Dhaka, 2013), 12.

of Bangladesh's fundamental human rights obligations. Though recognised as citizens of the country, being stigmatised on account of their caste and professional identity can leave Dalits in a situation of de facto statelessness.

While relatively little research has been conducted on the community, available information suggests that there are between 5.5 and 6.5 million Dalits and members of similarly excluded groups in Bangladesh, comprising between 3 to 4 per cent of the population. Dalits in Bangladesh are usually engaged in the most low paid and dirty work such as cleaning toilets, sweeping streets, and emptying septic tanks.<sup>47</sup> The absence of reliable and disaggregated data is a major factor in the continued barriers Dalits face in gaining political representation, accessing public services, and securing employment. In many cases, their discrimination is underpinned by the fact that they are religious minorities as well since Dalits are estimated to comprise as much as 70 per cent of the Hindu population in Bangladesh.<sup>48</sup>

Pursuant to the recommendation of the Bangladesh Law Commission, in 2014, the government formulated a draft law against discrimination, the Anti-Discrimination Act. Different national rights bodies, and representatives of the underprivileged communities have expressed their views and comments on the draft on different occasions. The draft was first submitted to the Law Ministry in 2014, but despite assurances by the Law Minister about its imminent passage, it was sent back to the NHRC for further revision after three years. The NHRC had sent it back to the government in April 2018, and it has remained under review for the last couple of years.

### **Indigenous Communities**

The state seemingly encourages intolerance towards the organisations working for and with Indigenous Peoples (IPs) by denying

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<sup>47</sup> Bangladesh Dalit and Excluded Rights Movement, and Nagorik Uddyog, *Joint NGO submission related to the review of Bangladesh at the 30th Universal Periodic Review session in 2018 Situation of Dalits in Bangladesh* (International Dalit Solidarity Network: Dhaka 2017), <https://idsn.org/wp-content/uploads/2018/03/NGO-report-UPR-Dalit-rights-in-Bangladesh-2017.pdf>.

<sup>48</sup> Ibid.

their freedom of association and through forced disappearance of IPs defenders. In 2019, the government issued a notice to organisations with the word ‘indigenous’ in their name and asked them to replace it with ‘ethnic’ or ‘tribal’ or the like.<sup>49</sup> It was said that failure to do so would result in cancellation of the organisation’s approval. Following that, the government has also stopped approving any development project of NGOs that focuses on indigenous communities.

The IPs of Bangladesh are not constitutionally recognised. Through the 15<sup>th</sup> Amendment to the Constitution in 2011, the government chose to term indigenous peoples as ‘tribes, minor races, ethnic sects and communities’,<sup>50</sup> while also calling all the people of Bangladesh, irrespective of their ethnic, linguistic and cultural backgrounds, as ‘Bangalee’.<sup>51</sup> This is interpreted by rights groups as an example of non-recognition of non-Bengali peoples, including IPs, even though a number of legal government documents interchangeably use the terms ‘tribal’,<sup>52</sup> ‘indigenous’,<sup>53</sup> ‘aboriginal’,<sup>54</sup> and ‘adivasi’.<sup>55</sup>

The Small Ethnic Groups Cultural Institutes Act 2010 recognises 27 small ethnic groups, although IPs organisations claim that there are at least 54 indigenous communities speaking more than 35 languages in the country.<sup>56</sup> The definitions section uses the term ‘adivasi’, the Bengali equivalent of indigenous, in explaining the

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49 Directive [Ref. No. 03.07.2666.660.66.49219.888] issued by the NGO Affairs Bureau, regulatory body of Bangladeshi NGOs, on 18 December 2019

50 The Constitution of the People’s Republic of Bangladesh, article 23A.

51 The Constitution of the People’s Republic of Bangladesh, article 6.2.

52 The CHT Accord of 1997; CHT Regional Council Act 1998 (Act 12 of 1998); Rangamati, Khagrachari and Bandarban Hill District Council Acts 1989.

53 CHT Regulation 1900; Finance Act 2010; Poverty Reduction Strategy (PRSP-2008, 2019-10); 6<sup>th</sup> Five Year Plan; Perspective Plan for Bangladesh 2010–2021 (2010); *Sampriti Chakma v Commissioner of Customs and Others* (5 BLC, AD, 29); *Wagachara Tea Estate Ltd v Md. Abu Taher and Others*, 36 BLD (2016).

54 State Acquisition and Tenancy Act 1950.

55 Statements of Prime Minister Sheikh Hasina, International Day of World’s Indigenous Peoples 2009, <https://earchive.prothomalo.com/view/dhaka/2009-08-09/11>; Small Ethnic Groups Cultural Institutions Act 2010.

56 ‘Stakeholder Report Universal Periodic Review—2nd Cycle’, National Human Rights Commission, Bangladesh, accessed Oct 2020, [https://lib.ohchr.org/HRBodies/UPR/Documents/Session16/BD/NHRC\\_UPR\\_BGD\\_S16\\_2013\\_NationalHumanRightsCommission\\_E.pdf](https://lib.ohchr.org/HRBodies/UPR/Documents/Session16/BD/NHRC_UPR_BGD_S16_2013_NationalHumanRightsCommission_E.pdf).

meaning of the term ‘small ethnic groups’. Despite the number of IP groups in Bangladesh, the country abstained from voting for the UN Declaration on the Rights of Indigenous Peoples in 2007.<sup>57</sup>

There is another long-drawn existential challenge for the IPs of Bangladesh. Historically, the Chittagong Hill Tracts (CHT) in the country’s south-eastern corner was an area inhabited exclusively by indigenous groups. Since the late 1970s, the Government of Bangladesh has facilitated the settlement of Bengalis in the CHT from various other parts of the country which means that the region has experienced demographic changes, reducing IPs into a near-minority.<sup>58</sup> This change has adversely affected the right to internal self-determination of the IPs as well as their socio-cultural and economic life. The CHT Accord of 1997, which recognises the special demographic and administrative status of CHT compared to other parts of the country, remains far from fully recognised in the Constitution.

IPs in Bangladesh who are engaged in defending civic rights and promoting democratic norms have faced enforced disappearance, extrajudicial killings, arbitrary arrests, harassment, among others, on a regular basis. The leader of the United People’s Democratic Front (UPDF), Michael Chakma, went missing in April 2019, on his way to Dhaka from Narayanganj district. The police refused to register a case of missing person, leading to Chakma’s sister filing a writ requesting he be presented before a judge or in court. Following that, the High Court ordered the Home Ministry to submit a report within five weeks. However, the police repeatedly stated that they could not find anybody named Michael Chakma in the prisons of Bangladesh.<sup>59</sup> Similarly, a case of rape of two women of indigenous background in Chittagong Hill Tracts in

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<sup>57</sup> ‘Bangladesh’, International Work Group for Indigenous Affairs, accessed March 10, 2020, <https://www.iwgia.org/en/bangladesh>.

<sup>58</sup> Amena Mohsin, *The Politics of Nationalism: The Case of the Chittagong Hill Tracts, Bangladesh* (Dhaka: University Press Limited, 1997), 70.

<sup>59</sup> B. Adams, ‘Still No Answers on Activist’s Disappearance in Bangladesh: Indigenous Rights Defender Michael Chakma Went Missing One Year Ago Today’, *Human Rights Watch*, April 8, 2020, <https://www.hrw.org/news/2020/04/08/still-no-answers-activists-disappearance-bangladesh#:~:text=One%20year%20ago%2C%20on%20the.p.m.%20He%20has%20never%20returned>.

January 2018, allegedly by men in uniform, was also buried as law-enforcement agencies prohibited the victims' families from talking to reporters and fabricated testimonials.<sup>60</sup>

Barriers to the exercise of the rights to freedom of speech, expression, and association in the country has been on the rise in recent years.<sup>61</sup> Intimidation by the local administration, law enforcement agencies, and security forces include restrictions on organising or holding rallies, social festivals, observation of the founding anniversary of any organisation, and processions and mass gatherings on the occasion of the anniversary of the CHT Accord. For instance, in May 2018, the Rangamati district administration did not allow Hill Students Council to organise an outdoor public gathering to mark its founding anniversary. In July 2018, security forces did not allow local inhabitants of Guiimara in Khagrachar Hill district and Bandarban Sadar in Bandarban Hill district to stage demonstration against the rape and killing of a 10-year-old indigenous girl.<sup>62</sup> In August 2018, the police obstructed a rally organised by IPs out to mark the International Day for the World's Indigenous Peoples in Gobindaganj of Gaibandha district. Furthermore, in August 2019, the local administration did not allow a Dhaka-based human rights team to visit Lama Bandarban to investigate the rape of two IP girls, allegedly committed by security personnel, in Bandarban Hill District.<sup>63</sup>

### **Sexual Minorities**

Discrimination against individuals based on their sexual orientation is common in Bangladesh. Along with societal discrimination, Islamic extremist groups have exhibited zero tolerance towards

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<sup>60</sup> Star Weekend, 'Rape of Marma Sisters', *The Daily Star*, February 2, 2018, <https://www.thedailystar.net/star-weekend/human-rights/rape-marma-sisters-1528471>.

<sup>61</sup> 'Kapeeng Watch', Kapaeeng Foundation, accessed March 2020, <https://www.kapaeengnet.org/category/kapaeeng-watch>.

<sup>62</sup> The Daily Star, 'Two Indigenous Girls "Raped" in Bandarban: Case Filed against 3 "BGB Men"; BGB denies Allegation', (August 2018), online: <https://www.thedailystar.net/news/country/two-indigenous-girls-raped-security-forces-bgb-bandarban-bangladesh-1624075>.

<sup>63</sup> Ibid.

the LGBTIQ+ community,<sup>64</sup> with the Hijra community<sup>65</sup> being an exception. The government, too, is quite set against LGBTIQ+ activism, in order not to antagonise Islamist groups. And, although the government has recognized the Hijra population as the ‘third gender’, there has not been adequate changes at the policy level or practices to recognise, ensure, and protect their rights.

Sexual and gender minorities in Bangladesh face numerous difficulties in accessing citizen services. They are discriminated against, stigmatised, and harassed on the basis of their sexual orientation, gender identity, behaviour, and sexual practices. Discrimination based on physical or cultural characteristic and sexual violence against the minorities are common due to a lack of legal protection and social marginalisation. Homosexuality in Bangladesh is prohibited and considered a disorder in society, with Section 377 of the Penal Code criminalising ‘carnal intercourse against the order of nature’. The government has opposed the idea of providing rights to the minorities, stating that it is not an accepted norm of the country. However, the proposed Anti-Discrimination Law mentions that there shall be no discrimination on the basis of one’s sexual orientation. The passage of the law remains uncertain so far.

### **Urdu-Speakers**

The Urdu-speaking people of Bangladesh are largely known as ‘Biharis’—a term that covers approximately 300,000 non-Bengali, Urdu-speaking Bangladeshis who have mostly remain stranded in camp settlements since 1971.<sup>66</sup> This community was also known as ‘stranded Pakistani’<sup>67</sup> after the independence of Bangladesh and until a decade ago were stateless.

The Bihari community has struggled to get citizenship rights.

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<sup>64</sup> Inge Amundsen, ‘The Ruins of Bangladesh’s LGBT Community’ *East Asia Forum*, March 23, 2018, <https://www.cmi.no/publications/6489-the-ruins-of-bangladeshs-lgbt-community>.

<sup>65</sup> Intersex and transgender individuals who are part of the socio-cultural landscape in South Asia.

<sup>66</sup> Mazharul Islam and Md. Tajul Islam, *Human Rights Situation of Urdu-speaking Community in Dhaka City* (Dhaka: Islamic Relief Bangladesh 2016).

<sup>67</sup> During the liberation war of Bangladesh in 1971 Bihari people opposed independence of Bangladesh and assisted Pakistani Military in genocide.

In 2008, a High Court decision,<sup>68</sup> recognised them as citizens of Bangladesh entitled to National Identity Cards and able to exercise their voting rights for the first time. This was in response to a writ petition<sup>69</sup> filed by 10 Urdu-speakers in 2003, when the High Court issued an order to the government to provide them with citizenship through enrolment in the voters' list. Ultimately, other Biharis were also granted citizenship through another directive of the Supreme Court in 2008.<sup>70</sup> The Court reiterated that according to the law, all members of the Urdu-speaking community were nationals of Bangladesh and directed the government to ensure their inclusion in the voters' list and provide them with National Identity Cards.

There was no expectation that the civil and political rights of Biharis would drastically change despite the issuance of National Identity Cards and their becoming voters. Biharis continue to struggle to enjoy their fundamental rights as citizens. They are often denied access to basic services or face harassment from government agencies for their identity as camp settlers. Biharis have faced difficulties in securing passports, birth registration, trade license or other important documents.<sup>71</sup> They are also hesitant to organise themselves to claim their rights as citizens because they have been stigmatised for their ancestors' role during the independence war. Even political parties have not expressed support towards this vulnerable community for the same reason. Since 2008, three parliamentary elections have been held but no party has taken up the issue of this community.

### **Rohingyas**

Three years since the violence and persecution in Myanmar forced hundreds of thousands of Rohingya to flee across the border to

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<sup>68</sup> Writ Petition No. 10129 of 2007, Md. Sadaqat Khan (Fakku) v Chief Election Commissioner, 60 DLR (AD) (2008) 407.

<sup>69</sup> Writ Petition No. 3831 of 2001, Abid Khan and others v. Govt. of Bangladesh and others, 55 DLR (2013).

<sup>70</sup> Writ Petition No. 10129 of 2007, Md. Sadaqat Khan (Fakku) v Chief Election Commissioner, 60 DLR (AD) (2008).

<sup>71</sup> 'Realising Citizenship Rights: Paralegals in the Urdu-Speaking Community in Bangladesh', Council of Minorities and Namati, accessed August 15, 2020, <https://namati.org/resources/realizing-citizenship-rights-paralegals-in-the-urdu-speaking-community-in-bangladesh>.

Bangladesh, 860,000 refugees continue to be hosted in Cox's Bazaar District. UN agencies and over 130 national and international NGOs have supported the government in providing crucial assistance and protection to both refugees and vulnerable local people, who continue to bear the socio-economic and environmental impact of the influx.

The government of Bangladesh, however, is sceptical of I/NGO assistance of the Rohingya. It banned 41 NGOs from working at Rohingya camps due to their efforts to increase awareness among the refugees on human rights.<sup>72</sup> The government has also declared an unofficial prohibition on surveys, research, or any project with the Rohingya. The Foreign Donations (Voluntary Activities) Regulation Act 2016 introduced tighter controls on financing and enhanced processes for NGO registration, delaying project approvals, slowing down implementation, and severely restricting international engagement with local civil society organisations.<sup>73</sup> There has been a barrier on mobile internet in Rohingya camps for the last two years in order to prevent militant activities even though the government is considering lifting the ban in order to be able to disseminate information on the Covid-19 outbreak to Rohingya refugees effectively.

## **Conclusion**

Civil and political rights in Bangladesh are being increasingly curtailed due to the presence of laws and practices inconsistent with the protection of fundamental human rights. The situation can be attributed to the absence of strong opposition political parties, concentrated governmental power, and lack of accountability.<sup>74</sup> The government's actions towards opposition political activists,

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<sup>72</sup> Refweb, 'Bangladesh: UN Experts Concerned by Crackdown at Rohingya Refugee Camps', (Sept 2019), accessed Sept 2020, <https://reliefweb.int/report/bangladesh/bangladesh-un-experts-concerned-crackdown-rohingya-refugee-camps>.

<sup>73</sup> Mark Bowden, 'The Current Context to the Rohingya Crisis in Bangladesh', (Oct 2020) accessed Oct 2020, <https://odihpn.org/magazine/current-context-rohingya-crisis-bangladesh/>.

<sup>74</sup> 'Catastrophic human rights situation in Bangladesh', CIVICUS, July 5, 2016, <https://www.civicus.org/index.php/media-resources/news/726-catastrophic-human-rights-situation-in-bangladesh>.

civil society, and the media has been increasingly hostile since the 2014 national election. It has also failed to protect free-thinkers, bloggers and minorities from attacks by militant groups. Although there are more than 30 private TV channels operating in the country, people seem to be fearful and anxious when it comes to expressing themselves on social media, owing mainly to the fear of being prosecuted under the 2018 Digital Security Act. As foreign assistance has dwindled in the country, CSOs have maintained engagement with the government on 'safe and soft' issues instead of advocacy of minority rights. The voice of the religious minority, never strong in Bangladesh, is at its lowest level at present.

Based on these existing realities, the following recommendations are made in order to create an open civic space in the country.

- i. Educate people on the need for tolerance, freedom of religion and belief, and strength of a pluralistic society, through an educational policy aimed at attaining a truly secular state as enshrined in the constitution. The constitutional position of Islam as a 'state religion' should not be allowed to impinge on the secular feature of the Constitution.
- ii. Implement effective and holistic action to eliminate the underlying motives for threats to religious minorities and to combat growing fundamentalist voices threatening the foundation of a free democratic society.
- iii. Allow opposition political parties to express their concerns. Ensure transparency and accountability and due process of law in taking actions against political vandalism.
- iv. Take swift action to tackle rising terrorism and violence, ensuring impartial investigations and prosecution of those responsible for attacks against religious minorities in order to end the culture of impunity with regard to these crimes.
- v. Take concrete legal and administrative measures to ensure constitutional recognition of the distinct identity of the indigenous peoples while reflecting the same in laws and policies, including their separate and independent enumeration in the census.
- vi. Take specific actions to finalise and enact the Anti-

- Discrimination Law, adopt a time-bound implementation plan, and arrange appropriate capacity development measures of government officials and other stakeholders to implement the law. Ensure that no discriminatory provisions and languages exist in the draft of the Anti-Discrimination law.
- vii. Identify and amend provisions in laws and policies to eliminate discrimination based on gender and sex. Take steps to incorporate comprehensive sexuality education in the national curriculum. Adopt specific laws or policies to ensure recognition of gender identities.
  - viii. Acknowledge the existence of sexual and gender minorities and amend relevant policies accordingly. Reform Section 377 of the Penal Code, thus decriminalising homosexuality and ensuring their rights to association.
  - ix. Recognise Dalits as a 'special' community, produce disaggregated data along with the poverty status of this community, and undertake special employment and livelihood development programmes for them.
  - x. Ensure basic rights of Biharis, including their access to basic services and amenities.
  - xi. Maintain diplomatic options for the safe return of the Rohingyas to Myanmar, and ensure that NGOs working to protect and assist Rohingyas are able to function without restrictions. Lift the ban on access to mobile internet in the refugee camps.
  - xii. Review the vague Digital Security Act and amend the law to make it compatible with international standards while preventing misuse of the law.

# Civic Space and Religious Minorities in Bhutan

Saroj K. Nepal

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## Background

Bhutan transitioned to a democratic form of governance in 2008, opting for a constitutional monarchy. The 2008 Constitution of the Kingdom of Bhutan guarantees citizens their right to civil liberties, freedom of expression, association, and to follow one's religion. Media development was sporadic after 2008 with several newspapers and radio stations set up. There is also an enhanced professional cadre of journalists in the country for the collection of information, analysis, and dissemination.

Civil society, in one form or another, has existed in Bhutan from time immemorial. It is unimaginable that the Bhutanese would have survived for centuries without collaborating with each other in the harsh and rugged terrain, isolated mountain communities and high state of underdevelopment. Hence, even before the required legislation for the non-government sector was enacted, Bhutan already had a number of NGOs such as the National Women's Association of Bhutan, the Royal Society for Protection of Nature, and the Youth Development Fund, among others. However, formal civil society grew only after the enactment of the Civil Society Organisations Act 2007 (hereafter, the CSO Act), which provided a platform and framework within the ambit of which CSOs could apply for registration. There are 51 CSOs currently active in Bhutan.

Bhutan is a predominantly Buddhist country with an estimated 75 per cent of the population following Mahayana Buddhism of the Drukpa Kagyu and Nyingma sects. Other religions also co-exist in the country with the Constitution, although specifying Buddhism

as the spiritual heritage of the country, guarantees freedom of religion. The majority of Bhutanese today follow Buddhism and Hinduism, with a minority following Christianity.

This chapter first discusses the state of civic space in Bhutan, elaborating on two aspects: civil society and the media. In exploring religious minority issues, it will focus on Christians as a minority group. Christians are few in number compared to followers of other religions, have faced discrimination in the past, and continue to be discriminated against even today.

### **Objectives**

The main objective of this chapter is to better understand civic space and the kind of discrimination Christians as a religious minority face in Bhutan. It is relevant because as of yet there is not much understanding of how religions other than Buddhism have been faring in the country. Hence, this chapter has the potential of adding to the body of knowledge not only about civil society and the media but also about a minority religion in Bhutan.

Civic space allows individuals and groups to contribute to policy-making that affects their lives by accessing information, engaging in dialogue, expressing dissent or disagreement, and coming together to express shared views. This paper will explore whether conducive conditions exist that enable civil society to play such a role in the political, economic, and social life in Bhutan.

The questions being addressed here are:

- i. What is the status of civic space in Bhutan?
- ii. What restrictions exist for NGOs, CSOs, and other organisations in registering, raising resources, and undertaking their work?
- iii. What forms of discrimination do minority religious groups in Bhutan face?
- iv. Why do they face discrimination?
- v. What coping strategies do minority religious groups use against discrimination?
- vi. Are religious groups/minority-focused groups able to organise themselves?

- vii. How are minority religious groups hindered from mobilising themselves against discrimination?

### **Methodology**

This paper uses the Minority Rights Framework to structure the study tools, data, and analysis. The primary mode of data collection involved in-depth open-ended interviews with a few members of the Christian community. It was initially envisaged that respondents would be sampled purposively and stratified to represent different age groups and social backgrounds. The intent was to interview individuals until data saturation was reached. However, this was not possible owing to the difficulty of finding respondents willing to be interviewed for the study.

The methodology chosen is also ideal given the current context in Bhutan wherein it is not possible to carry out a structured survey on religious minority rights without government-designated authorities endorsement of all surveys conducted in Bhutan, and it is extremely unlikely that the authorities would have endorsed such a survey. And, should surveys be carried out clandestinely, it could put both researchers and respondents at risk. A few persons known through personal contacts consented to being interviewed after due ethical considerations were followed. Secondary sources such as legislation, data, reports, and news articles were reviewed to supplement field work findings.

Besides information on the legal and policy environment, there is very little information available in Bhutan on civic space parameters. Therefore, online sources were used to extract data and information on reports from organisations such as the Bhutan Centre for Media and Democracy. Data from international agencies such as the Freedom House and the US Department of State were used. Since there is no data available on religions and religious groups in Bhutan, the study had to depend on online sources such as the annual Report to Congress on International Religious Freedom.

In terms of limitations, it should be noted that it was not easy to convince potential respondents. Several individuals were approached but they declined to participate after the objectives

of the study and ethical considerations were spelled out; this indicates the sensitivity of discussing religion with Christians in Bhutan. Despite this, three respondents agreed and were interviewed. Based on these few interviews, this paper has been written keeping in mind that the study can never be considered representative in any statistical sense. Nevertheless, the interviews provided rich information on some aspects of Christianity and lives of the Christian population in Bhutan that is generally not well known.

## **Findings**

### **Constitutional, Legal and Policy Frameworks**

The Office of the United Nations High Commissioner for Human Rights (OHCHR) defines ‘civic space’ as ‘the environment that enables civil society to play a role in the political, economic and social life of our societies. In particular, civic space allows individuals and groups to contribute to policy-making that affects their lives, including by: accessing information; engaging in dialogue; expressing dissent or disagreement; and joining together to express their views.’<sup>1</sup> Using this definition, there are several pieces of legislation in Bhutan that have a bearing directly or indirectly on civic space and minority rights in Bhutan. These are discussed in this section.

### ***The Constitution of Bhutan 2008***

Under the fundamental rights guaranteed in the Constitution, Bhutanese citizens have the right to freedom of speech, opinion, and expression (Article 7.2) and the right to information (Article 7.3). The Constitution also guarantees freedom of press, radio and television and other forms of dissemination of information, including electronic (Article 7.6). Citizens also have freedom of peaceful assembly and freedom of association, other than membership of associations that are harmful to the peace and

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<sup>1</sup> ‘What is Civic Space’, United Nations Human Rights Office of the High Commissioner, accessed on September 30, 2020, <https://www.ohchr.org/EN/Issues/CivicSpace>.

unity of the country; citizens also have the right to discern and not be compelled to belong to any association (Article 7.12).<sup>2</sup>

***Civil Society Organisations Act 2007***

The CSO Act enacted in 2007 provides the framework for the establishment and growth of civil society, to promote social welfare and improve quality of life of the people but also to ensure a system of public accountability for responsible self-regulation and to promote public partnership through government-CSO partnership. Over the years, however, CSOs have faced several legal constraints to taking up certain activities. For example, the CSO Act 2007 is silent on the advocacy function of CSOs. And since any advocacy can be construed as ‘political’, which is prohibited by the Act, it deters any advocacy work by CSOs in support of issues faced by their target group.

There have been some instances when CSOs have advocated and lobbied the government and have also been involved by the government in the review of legislation. However, CSOs are reluctant to engage in advocacy for fear of having their registration certificates revoked or withheld when going for the annual renewal. One reason why CSOs do not apply to work in the area of advocacy for certain religious, ethnic, or minority group is because their applications for registrations would not be approved in the first place. Requests can be made under the Religious Organisations Act 2007 but religious groups like Christians have not been able to register as such under that act.

Activism and advocacy are few and far between in Bhutan. Several CSOs indulge in such activities that lie in mandate but these issues are generally non-contentious ones such as domestic abuse, support for women, LGBTIQ+, the environment, people living with HIV/AIDS, and people dependent on drugs and alcohol, among others.

***Bhutan Information, Communications and Media Act***

The Bhutan Information, Communications and Media Act was passed in 2018. The Act calls for strengthening the independence of

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<sup>2</sup> The Constitution of the Kingdom of Bhutan, 2008, <https://www.nab.gov.bt/assets/templates/images/constitution-of-bhutan-2008.pdf>.

the media for a free and vibrant fourth estate. A Media Council has also been established to monitor offensive and harmful content, but there is also fear that it could lead to an erosion in press freedom and foster greater self-censorship.<sup>3</sup>

### ***Religious Organisations Act 2007***

The Constitution guarantees citizens the right to freedom of thought, conscience and religion while providing the safeguard that no person shall be compelled to belong to another faith by means of coercion or inducement. The Religious Organisations Act 2007 guides the establishment of religious bodies in order to benefit religious institutions and protect Buddhism as the spiritual heritage of Bhutan.<sup>4</sup> There, however, is an absence of any element of advocacy that religious organisations can take on for their adherents. According to both the Constitution and the Religious Organisation Act, proselytisation is banned while the Act also requires religious organisations to be apolitical as well.

### **Civic Space in Bhutan**

The Freedom House Report of 2018 granted Bhutan the designation of being only ‘partly free’, with an overall score of 59 out of 100: 29 out of 40 for political rights and 30 out of 60 for civil liberties.<sup>5</sup> Some of the reasons mentioned for the low score are discrimination based on ethnicity and religion and use of libel and defamation cases against journalists.<sup>6</sup> The same report acknowledges that while there are multiple media houses, all are dependent on the government for income from advertisements. The media environment has a high degree of self-censorship, and critics are silenced by the powerful through the use of anti-defamation laws.

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<sup>3</sup> ‘Freedom House Report 2018–Bhutan’, Freedom House, accessed June 1, 2020, <https://freedomhouse.org/country/bhutan/freedom-world/2018>.

<sup>4</sup> National Assembly of Bhutan, *Religious Organizations Act 2007* (Thimphu: National Assembly of Bhutan, 2007), [https://www.nab.gov.bt/assets/uploads/docs/acts/2014/Religious\\_organisation\\_act\\_of\\_BhutanEng2007.pdf](https://www.nab.gov.bt/assets/uploads/docs/acts/2014/Religious_organisation_act_of_BhutanEng2007.pdf).

<sup>5</sup> ‘Freedom House Report 2018–Bhutan’, Freedom House, accessed June 1, 2020, <https://freedomhouse.org/country/bhutan/freedom-world/2018>.

<sup>6</sup> Ibid.

### ***Civil Society***

Several organisations such as the Royal Society for Protection of Nature (RSPN) and the National Women’s Association of Bhutan (NWAB) existed before 2007 and following the enactment of the CSO Act, these groups could register for formal recognition as a CSO. There are now 51 active CSOs in the country. These CSOs are allowed to secure funds from sources both within and outside the country, and several donor groups have supported CSO projects funds since 2010. Some CSOs such as the Bhutan Centre for Media and Democracy also regularly hold capacity-building events with other CSOs on democratic principles and practice, media literacy, use of media, and leadership. A report shows that only 43 per cent of the respondents in a study felt that CSOs contributed to strengthening democracy whereas 54 per cent were not aware if CSOs have made such a contribution or not.<sup>7</sup> This suggests that CSOs have low visibility in Bhutan’s development and democracy sectors.

Most CSOs are primarily engaged in service delivery to their constituents and target groups. There are a few that are involved in development projects while others provide services to specific vulnerable groups such as women facing domestic violence, people living with HIV/AIDS, those suffering from alcohol and drug addiction, etc. CSOs can carry out their mandate with funds raised by themselves from a range of sources not limited to residential bilateral and multilateral donors, international agencies and NGOs, corporate sector, and individuals from within the country and abroad. None of the CSOs, however, pursue advocacy as their main activity.

CSOs would not have advocacy mentioned in their Articles of Association because it is likely to have been screened out before being registered. Provisions on advocacy are unclear in the CSO Act. Several CSOs have been involved in advocacy within their specific mandate, such as people living with HIV/AIDS or the rights of the LGBTIQ+ community, among others. CSOs received

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<sup>7</sup> UNDP Bhutan, *National Human Development Report: 10 Years of Democracy* (Thimphu: UNDP Bhutan, 2019) <http://hdr.undp.org/sites/default/files/nhdr-2019ii.pdf>.

a boost from the King, who awarded them gold medals in 2016 in recognition of their services. CSOs in the last five years have also become more organised as a fraternity and have formed a CSO Coordination Committee to represent their collective interests.

Although the Constitution guarantees freedom of assembly,<sup>8</sup> this right is curtailed by certain government restrictions. For instance, if people want to have a public gathering, they require prior government approval, which can be denied. Other measures such as curfews and government-designated location of demonstrations affect the right to peaceful assembly. Although the CSO Act in principle allows people to associate and establish CSOs, registration can be withheld if the CSOs' articles of association and memoranda of understanding are construed as being 'harmful to the peace and unity of the country.'<sup>9</sup> The fact that this has not happened so far reflects the compliance of CSOs but also the inability of the regulatory body, the CSO Authority, to monitor and enforce compliance, especially if some CSOs enjoy powerful patronage.

The government's hand in enforcing restrictions on freedom of assembly is also reinforced by the Penal Code of Bhutan, which prohibits promotion of civil unrest.<sup>10</sup> There have been a few cases where citizens have assembled and made their demands to the state. More than a decade earlier, some people had held a peaceful march to protest the inadequacy in government action to hold an inquiry and bring defaulters to account when a dam opened for cleaning caused a flood, washing away six children playing downstream. This resulted in some civil servants who had participated in the peace march being reprimanded and even being relieved from service. In another instance, a few years ago, the parents of youths sent to Japan through a company to 'earn and learn' were unduly overcharged and faced immense difficulties in finding jobs and accessing health care in Japan. The youths faced hunger and

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<sup>8</sup> Ibid.

<sup>9</sup> National Assembly of Bhutan, *Religious Organizations Act 2007* (Thimphu: National Assembly of Bhutan, 2007), [https://www.nationalcouncil.bt/assets/uploads/docs/acts/2014/Civil\\_Society\\_Act\\_2007Eng.pdf](https://www.nationalcouncil.bt/assets/uploads/docs/acts/2014/Civil_Society_Act_2007Eng.pdf).

<sup>10</sup> UNDP Bhutan, *National Human Development Report: 10 Years of Democracy* (Thimphu: UNDP Bhutan, 2019), <http://hdr.undp.org/sites/default/files/nhdr-2019ii.pdf>.

sickness and some even resorted to petty theft to survive. The parents hired a lawyer and formally launched a complaint to the Royal Bhutan Police. This time the police launched an inquiry and arrested those responsible. Both incidents were reported in the media, including by *Kuensel*, the government-owned newspaper.<sup>11</sup>

### **Media**

Until 1999, Bhutan only had state-owned and -run media, namely, the daily newspaper *Kuensel* and the Bhutan Broadcasting Corporation radio. In 1999, access to the internet and television was approved with services provided by government entities, the Bhutan Broadcasting Service and Bhutan Telecom. Thereafter, many private newspapers and radio stations have proliferated in the country, leading to a plurality in media outlets.

People access media according to their preference and affordability. The use of cellular technology has accelerated access to the web from hand-held devices. Many people use social media platforms and this has, over time, replaced mainstream media for communication, news and entertainment. According to Bhutan Watch 2019,<sup>12</sup> an organization researching on issues related to Bhutan out of Nepal, 'social media have become informal platforms for people to express themselves about corruption, politics, leaders, issues and even news, with little or no censorship'. However, the incidence of minority groups like marginalised ethnic groups and religious groups using the social media platform to express themselves is limited although the LGBTIQ+ community has come forth occasionally in social media.

Journalists in Bhutan practise self-censorship, which is an effective indicator of the degree of lack of freedom of media in the country. Journalists are unable to freely express themselves and it is possible that they fear retribution for their content which may not be palatable to people in power and influence. They have also reportedly faced threats from the government. Even private media

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<sup>11</sup> Kuensel, 'Police Detains BEO owners', *Kuenselonline.com*, August 1, 2019, <https://kuenselonline.com/police-detains-beo-owners/>.

<sup>12</sup> 'Rights under shadow. Status of Human Rights Report 2018', Bhutan Watch, accessed on June 1, 2020, <http://www.bhutanwatch.org/rights-under-shadow/>.



houses face increasing intimidation and journalists and media houses are not even protected by law.<sup>13</sup> Making things further difficult for journalists is the Penal Code of Bhutan, which defines defamation and libel as offences punishable with a penalty of three years' imprisonment.<sup>14</sup>

Freedom of expression is constitutionally guaranteed and generally respected in the country. This freedom is exercised through an independent press, an effective judiciary, and a functioning democratic political system.<sup>15</sup> A UNDP study showed that 68 per cent respondents believe that the media is free to express the truth whereas 82 per cent felt that media has been able to voice the concerns of the people.<sup>16</sup> Yet, existing laws can penalise speech that creates or attempts to create 'hatred and disaffection among the people' or 'misunderstanding or hostility between the government and people', among other offenses.<sup>17</sup> The language

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13 Susan Banki, 'Bhutan: Chasing Development in the Dragon Kingdom', *East Asia Forum*, February 13, 2020, <https://www.eastasiaforum.org/2020/02/13/bhutan-chasing-development-in-the-dragon-kingdom/>.

14 'State of Civil Society Report 2020', CIVICUS, accessed on June 1, 2020, <https://www.civicus.org/index.php/state-of-civil-society-report-2020>.

15 'Freedom House Report 2018—Bhutan', Freedom House, accessed on June 1, 2020, <https://freedomhouse.org/country/bhutan/freedom-world/2018>.

16 UNDP Bhutan, *National Human Development Report: 10 Years of Democracy* (Thimphu: UNDP Bhutan, 2019), accessed on June 1, 2020, <http://hdr.undp.org/sites/default/files/nhdr-2019ii.pdf>.

17 National Council of Bhutan, *National Security Act 1992* (Thimphu: National

of the law can be misinterpreted and thus misused. Therefore, citizens are reportedly careful when exercising this freedom as they could be charged with defamation, especially if they criticise the powerful.<sup>18</sup>

The Bhutan Information, Communications and Media Act 2018 does not contain any clauses for the protection of journalists or guarantee freedom of information. The Act also prohibits any alliance of media houses with political parties while banning the media from endorsing electoral candidates. The 2018 Bhutan Human Rights Report states that rather than being facilitative, the Media Council established under the amended Media Act has led to increased self-censorship among journalists especially during elections. Bhutanese enjoy internet freedom, and there have been no restrictions on any websites except the blocking of a few pornographic sites and those considered anarchic to the state.<sup>19</sup> The report also states that citizens' internet activity and communications have not been monitored.<sup>20</sup>

Civic space in Bhutan may have expanded to a certain degree after Bhutan transitioned to a democracy and internet technology made participation in social media, and, by extension, in democracy, possible. However, civic space as of yet is 'obstructed'<sup>21</sup> because existing legislation is inadequate in guaranteeing the spirit of the Constitution. For instance, citizens, including journalists, have the right to freedom of expression but no safeguards exist in operational rules and regulations to protect citizens when they assert this right. Citizens are allowed right to peaceful assembly but in practice are discouraged by authorities and people can be targeted for participating in such events. CSOs exist but their

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Council of Bhutan, 1992), [https://www.nationalcouncil.bt/assets/uploads/docs/acts/2014/National\\_Security\\_Act\\_1992Eng.pdf](https://www.nationalcouncil.bt/assets/uploads/docs/acts/2014/National_Security_Act_1992Eng.pdf).

<sup>18</sup> United States Department of State, *Bhutan 2017 Human Rights Report* (Washington D.C.: United States Department of State, 2018), accessed on June 1, 2020, <https://www.state.gov/wp-content/uploads/2019/03/BHUTAN-2018.pdf>.

<sup>19</sup> United States Department of State, *Bhutan 2017 Human Rights Report* (Washington D.C.: United States Department of State, 2018), <https://www.state.gov/wp-content/uploads/2019/03/BHUTAN-2018.pdf>.

<sup>20</sup> Ibid.

<sup>21</sup> 'CIVICUS Monitor: Tracking Civic Space', CIVICUS, accessed on June 1, 2020, <https://www.civicus.org/index.php/what-we-do/innovate/civicus-monitor>.

role does not transcend service provision and causes which require attention which therefore continue to fester and remain unaddressed. Besides, differential application of the law has also led to a situation at odds with the intent of laws. Citizens, civil society, and journalists are restrained from advocacy and activism as any effort to do so can be construed as a ‘political’ act or deemed disruptive of the public order, leading to substantial penalties.

### **Religious Minorities in Bhutan**

The majority of the people in Bhutan follow Buddhism, with the main sects being Drukpa Kagyu and Nyingma. Hindus form the second largest religious group. Among the Lhotsampa community who are people of Nepali origin inhabiting the southern border region in Bhutan, there are also people belonging to the Rai and Limbu sub-ethnic communities who are followers of Kirat Dharma. There are also small groups of Bhutanese citizens who still follow the traditional Bon (animist) beliefs and practices in addition to being adherents of one of the two Buddhist sects in Bhutan. There are also Christians in Bhutan, with most of them being Roman Catholics and others belonging to Protestant denominations.

Bhutan has never been featured either as a ‘Country of Particular Concern’ or in the ‘Special Watch List’ in the United States Religious Freedom Report.<sup>22</sup> However, this does not mean that there are no underlying issues regarding religious freedom. The Constitution protects freedom of religion, but local authorities are known to harass non-Buddhists. While Bhutanese of all faiths can worship freely in private, people experience pressure to participate in Buddhist ceremonies and practices.<sup>23</sup>

Though freedom of religion is guaranteed by the Constitution of Bhutan, recent history shows that the state, and to a certain extent the general public, have had issues with Christianity and Christians. There have been cases of proselytisation where people

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<sup>22</sup> ‘International Religious Freedom Report 2020’, United States Commission on International Religious Freedom, accessed on June 1, 2020, <https://www.uscirf.gov/publications/2020-annual-report>.

<sup>23</sup> ‘Freedom House Report 2018—Bhutan’, Freedom House, accessed 1 June 2020, accessed on June 1, 2020, <https://freedomhouse.org/country/bhutan/freedom-world/2018>.

have been convicted in accordance with the Constitution and the Penal Code of Bhutan.<sup>24</sup> Proselytisation, however, continues discreetly by both Bhutanese and tourists entering the country.

With this background, the following section will further discuss the output of the in-depth interviews in terms of the situation of Christianity in Bhutan, religious practice, conflicts related to Christianity, and discrimination against them. The respondents are young people of Lhotsampa ethnicity and Christian faith who were among the few who consented to participate in the interviews.

### ***Christianity in Bhutan***

The first Christians to arrive in Bhutan were two Portuguese priests in 1627, whose attempts to build a church and convert people were, however, unsuccessful.<sup>25</sup> It took 350 years before Christians entered Bhutan again when in the early 1970s, Roman Catholic priests and nuns were invited by the Government of Bhutan to manage a few schools in specific areas in the country. Several Catholic priests and academics were recruited to teach in these schools. There is no record of overt attempts at conversion of students by these priests and nuns, suggesting that they confined their activities to management and teaching at the institutions they were assigned to. This also explains why they continued to assist the government in educational activities for over 25 years. After their stint in Bhutan, the Jesuit priests and nuns returned to their parent institutions' churches in West Bengal and Canada.

In the absence of any hard data, the US State Department's Religious Freedom Report for 2019 estimates the number of Christians in Bhutan to range anywhere between 8,000 to 30,000.<sup>26</sup> The respondents for the study were also asked to estimate how many Christians there are in Bhutan. The figures estimated were

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<sup>24</sup> 'International Religious Freedom Report 2019', United States Commission on International Religious Freedom, <https://www.uscirf.gov/publications/2019-annual-report>.

<sup>25</sup> Baillie, Liza. 'Father Estevao Cacella's Report on Bhutan in 1627', 1627, Translated from Portuguese, *Journal of Bhutanese Studies* (1999), [http://himalaya.socanth.cam.ac.uk/collections/journals/jbs/pdf/JBS\\_01\\_01\\_01.pdf](http://himalaya.socanth.cam.ac.uk/collections/journals/jbs/pdf/JBS_01_01_01.pdf).

<sup>26</sup> 'International Religious Freedom Report 2019', United States Commission on International Religious Freedom, accessed on June 1, 2020, <https://www.uscirf.gov/publications/2019-annual-report>.

rather extreme, which is not surprising since official figures are neither available nor accessible. Estimation also becomes difficult due to self-censorship of Christians who may not declare their religious beliefs, and usually list the religion they adhered to before conversion for fear of any reprisal from the authorities.

The persons interviewed for this paper were young individuals who may not have complete knowledge about the history of Christianity in Bhutan. They believed that along with western education, Christianity may have come into Bhutan through Christian teachers recruited from India and Jesuits brought in to manage schools in Bhutan. They reasoned that Christianity may have spread mostly in the 1960s and 1970s, extrapolating from the time their parents became Christians. The growth of other sects is linked to the Christian movement in neighbouring India, where evangelists are suspected of leading conversions using material inducements.

On the ethnic profile of Christians, based on personal observations and interactions with people, it can tentatively be said that most Christians belong to the Lhotsampa minority group, and hence, Christians are bearing the double burden of discrimination of being both an ethnic and religious minority. However, there are some Sharchogpas (from eastern Bhutan) and Ngalongpas (from western Bhutan) who have also adopted Christianity.

There are conflicts within Christian denominations arising from differences in doctrines regarding their understanding of truth and practices. While practices of some denominations are orthodox in nature, others are liberal. There are reports of members of one denomination stigmatising other denominations and finding faults in their prescribed norms. However, there has been no conflict between Christians and people from other faiths reported in the media. Since this study only included Christians as respondents, it was not possible to get the perspective of people from other religions on how they felt about Christians.<sup>27</sup>

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<sup>27</sup> One respondent said that when someone he met realised that he was a Christian, the person 'lectured' him on Buddhism and even stated that most people in Bhutan follow Buddhism. That kind of stigmatisation is likely to continue into the future.

***Discrimination***

Respondents stated that there have been reports of Christians in Bhutan losing jobs during the 1990s. A respondent said that until about 10 years ago they used to live in constant fear while holding weekly church services. While some changes might have occurred in the years since, Christian children are humiliated at school by teachers and often ostracised by their non-Christian friends. Christians are also ostracised by their own relatives after conversion. Some face stigmatisation at work with colleagues avoiding them. Christians in the past were reportedly imprisoned and beaten. Some claimed that their citizenship cards were not updated until they re-converted to their original religion.

There is a range of ways in which Christians in Bhutan are reportedly being discriminated against. In villages, they are deprived of government-subsidised agricultural inputs. Children from Christian families have been denied admission to school. Christians have had to worship in fear. Christians have been arrested on grounds of proselytisation.<sup>28</sup> There have been cases where Christians have been deprived of state benefits as well as faced harassment, especially in rural areas, as noted by the author during his interactions with a Christian family in a village.

Bhutanese Christians have not been allotted burial grounds either. There was an area in the capital Thimphu that had been designated as a burial ground but the order was later rescinded after people living near the site complained of exhumation of bones by dogs and wild animals. Members of the Church of the Brethren take the bodies to Jaigaon (a town on the Indian side of the Bhutan-India border) for burial in the land they have bought. The elders of this community have asked for a graveyard in Bhutan itself but their pleas have thus far been ignored. The Pentecostal Church has a practice of burying the dead in a cemetery in Chamurchi (another border town in India). Roman Catholics take their dead to Jaigaon or to Darjeeling (in North Bengal, India) for burial.

The reason Christians attribute to this discrimination is the

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<sup>28</sup> 'International Religious Freedom Report 2018', United States Commission on International Religious Freedom, accessed on June 1, 2020, <https://www.uscirf.gov/publications/2018-annual-report>.

insecurity faced by other religions due to the increasing number of Christians in the country. Further, while Christianity is considered a foreign religion, Hinduism is seen in a more kindly light since it has deities in common with Buddhism, albeit with different names.

Christians in Bhutan have adopted a 'do nothing' approach towards discrimination despite being fully aware of the fact. It is likely that Christians fear that some action may be taken by the government and members of other religious communities if they were to stand up against discrimination in any way. One of the reasons for this inaction is also that since most Christians are Lhotsampas, they already have experience of discrimination and total marginalisation in their social, economic, and political lives owing to the 'Southern Problem'. Many Bhutanese know the problem that occurred in southern Bhutan and mainly of southern Bhutanese (Lhotsampas) affected by state policy as the 'Southern Problem'. They are unwilling to re-visit that phase of suffering in their lives.

It is also notable that there has not been any broad-based movement of Christians to raise their concerns with the state. This is probably due to the small number of Christians in the country, fragmented nature of organisation among Christians of different denominations, and prohibition of dissent. There are no religion-based civil society groups in the country. Religious groups have to register as a religious organisation under the Religious Organisations Act and cannot operate as a CSO. Christian churches have often been unable to obtain registration from the government,<sup>29</sup> which means that they cannot raise funds or buy property, placing constraints on their activities. In view of the situation prevailing thus, it is evident that Christians face closed civic space in Bhutan and cannot organise for any form of activism and advocacy for their religious rights in the country.

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<sup>29</sup> 'International Religious Freedom Report 2019', United States Commission on International Religious Freedom, accessed on June 1, 2020, <https://www.state.gov/reports/2019-report-on-international-religious-freedom/bhutan/>.

## **Conclusion**

Within limitations of data access and availability in the country on civic space and religious issues as well as constraints due to the COVID-19 situation, this study is an initial attempt to augment understanding of the civic space in Bhutan through an exploration of civil society and the media in the country. The chapter also sought to understand the many ways in which Christians face discrimination in everyday life.

The transition to democracy with the 2008 Constitution guarantees freedom of speech, opinion and expression and freedom of press, radio, and television. Other rights also encompass rights to peaceful assembly and association other than that which is harmful to the peace and unity of the country. The CSO Act 2007 provides the framework within which CSOs can operate, but the Act is largely silent on issues of advocacy. CSOs thus remain silent on important issues out of fear of revocation of their registration. The Information, Communication and Media Act 2018 similarly has substantial content on information aspects but is limited in coverage in terms of roles and responsibilities of media houses and does not contain provisions for protection of journalists.

Advances in the plurality of media in Bhutan accelerated after citizens accessed television and internet in 1999. After 10 years, many more media houses supplemented the state sponsored radio and newspaper. The penetration of cellular technology in the last 10 years has also led to wider adoption of social media in the country. The population is therefore active in social media and news is more rapidly accessed in social media than mainstream media. Besides, opinions and views are expressed more openly in social media platforms, though often under pseudonyms. This is because in recent years, defamation laws have been invoked against citizens and journalists because of which people and journalists have become wary and even censor their views.

Many CSOs in Bhutan deliver services to meet the needs of target groups sometimes unmet by government development programmes. Although many CSOs identify specific issues which they would like to lobby for, the possibility of having their registrations revoked deters them from advocacy. This is a huge

constraint on the ability of CSOs to play a watchdog role in the country and to institute a check-and-balance system on government which can become tyrannical if not checked. It should be noted though that CSOs have submitted a proposal for amendment of the Act but it has not been deliberated in the National Council, one of the houses of the Bhutanese Parliament as yet but only by one of the Committees of this house.

Christians are a religious minority not only because of their limited population but also because of the discrimination they face in Bhutan. The fundamental right to freedom of religion enshrined in the Constitution has enabled people to follow Christianity. Yet, they face challenges and restrictions in various forms. Even after several attempts, Christians have not been able to register themselves as a religious organisation under the Religious Organisations Act 2007. There are no churches, so people are compelled to worship in private. Furthermore, as of yet Christians have not been able to obtain a burial place in the country.

Though overt discrimination ceased after democratisation, Christians still face subtler forms of discrimination like stigmatisation and to some extent deprivation of state benefits. Of particular concern are ethnic *Lhotsampas* who have become Christians since they face double discrimination. No CSOs have taken up the cause of Christians and it is likely that any CSO attempting to do that would not be registered in the first place. Christians in the country seem divided by their denomination, practices, source of funds, and leadership, and, as with CSOs and the media, Christians, too, refrain from raising a voice regarding their rights and needs.

### **Recommendations**

In view of the above, the following recommendations are proposed:

- i. The primary recommendation for enhancing civic space in Bhutan is amendment of the relevant legislations, namely, the CSO Act and the Religious Organisations Act, to allow for advocacy efforts by CSOs and religious organisations invoking the provisions in the Constitution guaranteeing the right to freedom of expression.

- ii. The laws also need to guarantee protection of people who assert their fundamental rights. The Information, Communication and Media Act, for instance, does not protect journalists from the powerful elite and the government.
- iii. Christians should be granted legitimate recognition as a group asserting their constitutional right to follow any religion. Furthermore, they should be given an opportunity to register as a religious group which would pave the way for fulfilling their needs through a process of engaged dialogue.

# Closing Civic Space in India Targeting Minorities amid Democratic Backsliding

Citizens Against Hate, India<sup>1</sup>

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## Introduction

Civic space—defined as the environment that allows civil society organisations to organise, participate, and communicate without hindrance—has been a contested but vibrant space in India. With an estimated three-million-plus civil society organisations (CSOs) and a multitude of social movements working to advance socio-economic and political rights, and holding governments to account, India has historically boasted of an active and vibrant civil society. These have gone hand in hand with and nurtured stable democracy. It is this civil society vibrancy, in addition to its massive population size, that accounts for India's 'world's largest democracy' label.

Since 2014, these claims have begun to tarnish. The Hindu nationalist Bharatiya Janata Party's (BJP) ascension to power that year, led by Prime Minister Narendra Modi, has adversely impacted civic space in India, which, we will demonstrate, is shrinking, particularly for the country's minorities and groups working with them. India's civil society actors—its human rights lawyers, activists, protesters, academics, journalists, liberal intelligentsia, and others who have spoken out against government excess and majoritarianism—have increasingly been under attack. By almost every internationally measured parameter of civic space

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<sup>1</sup> Citizens Against Hate is a Delhi-based collective of individuals and groups committed to a secular, democratic and caring India. Its members are drawn from a wide range of backgrounds—academia, law, business, media and the social sector. See: <http://citizensagainsthate.org/>.

**Table 1: India's Performance in Key Global 'Civic Space' Indices, 2014-2020**

Index	Factors/Parameters/Principles	Global Rank (previous)	Global Rank (latest)
CIVICUS Monitor's National Civic Space Ratings*	Freedoms of association, peaceful assembly, expression	'Obstructed' (2014)	'Repressed' (2019)
The Economist Intelligence Unit's Democracy Index†	Electoral process and pluralism; functioning of government; political participation; political culture; civil liberties	27/167 (2014)	51/167 (2020)
Freedom House's Freedom in the World Report‡	Political rights: electoral process, political pluralism and participation, functioning of government; civil liberties: freedom of expression and belief, associational and organisational rights; rule of law; personal autonomy and individual rights	India score: 77/100—Free (2017), Indian-Kashmir score: 50/100—Partly Free (2017)	India score: 71/100—Free (2020), Indian-Kashmir score: 28/100—Not Free (2020)
World Justice Project's Rule of Law Index§	Constraints on government powers; absence of corruption; open government; fundamental rights; order and security; regulatory enforcement; civil justice; criminal justice	59 (2015)	69 (2020)
Reporters Without Borders' World Press Freedom Index**	Pluralism; media independence, environment and self-censorship; legislative framework; transparency; infrastructure; abuses	140/180 (2015)	142/180 (2020)

\* 'CIVICUS - Tracking Conditions for Civic Action—India', CIVICUS, accessed 16 July 2020, <https://monitor.civicus.org/country/india>.

† 'India Falls to 51st Position in EIU's Democracy Index', *The Economic Times*, January 23, 2020.

‡ 'India Suffers "Alarming" Decline in Civil Liberties, Kashmir Ranked "Not Free": 2020 Freedom Report', HuffPost India, March 4, 2020, [https://www.huffingtonpost.in/entry/india-human-rights-kashmir-2020-freedom-report\\_in\\_5e5f35edc5b67ed38b3a553e](https://www.huffingtonpost.in/entry/india-human-rights-kashmir-2020-freedom-report_in_5e5f35edc5b67ed38b3a553e).

§ 'WJP Rule of Law Index 2020', World Justice Project, accessed 16 July, 2020, <https://worldjusticeproject.org/our-work/research-and-data/wjp-rule-law-index-2020>.

\*\* 'India Ranks 142nd on Global Press Freedom Index', *The Economic Times*, April 22, 2020.

and dissent, India's performance has regressed since 2014, often substantially (Table 1).

The situation turned graver in 2019, when the BJP was re-elected to power despite its previous assaults on civil liberties and its heightened targeting of minorities. This is only partly reflected by CIVICUS's downgrading of India's civic space rating in December 2019 from 'Obstructed' to 'Repressed', and its decision in March 2020 to place India on its Watch List.<sup>2</sup> In the meantime, the BJP government has continued its attempts to silence critics and quell dissent, especially those from minority backgrounds and those speaking on their behalf.<sup>3</sup> Justice institutions, rather than standing as bulwarks against executive excess, might be aiding the process, most recently exemplified by the case of the Supreme Court charging senior advocate Prashant Bhushan with criminal contempt of court for his critical tweets against the Chief Justice of India.<sup>4</sup>

## **Civic Space, Objectives, and Research**

### **Civic Space and Its Meanings**

Civic space has been described as the bedrock of any open and democratic society. When civic space is open, citizens and civil society organisations are able to organise, participate and communicate without hindrance. In doing so, they are able to claim their rights and influence the political and social structures around them.<sup>5</sup> For civic space to be open, thus enabling citizens' ability to engage in democratic dissent, states must uphold their duty to protect and facilitate citizens' fundamental rights (i) to associate,

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<sup>2</sup> 'Global Monitor Adds India to Watchlist for "Decline" in Fundamental Freedoms', *The Wire*, March 13, 2020, <https://thewire.in/rights/civicus-monitor-watchlist-cao-india>.

<sup>3</sup> 'CIVICUS—Tracking Conditions for Civic Action—India', CIVICUS, accessed 16 July 2020, <https://monitor.civicus.org/country/india/>.

<sup>4</sup> 'Pay Re 1 or Face 3-Month Jail Term with 3-Year Ban: Supreme Court to Prashant Bhushan', *Indian Express* September 1, 2020, <https://indianexpress.com/article/india/prashant-bhushan-supreme-court-sentencing-punishment-live-updates-contempt-of-court-tweets-6576973/>.

<sup>5</sup> 'What is Civic Space?' CIVICUS, accessed 16 July, 2020, <https://monitor.civicus.org/whatis-civicspace/>.

(ii) assemble peacefully, and (iii) freely express views and opinions. These are the three critical rights that civil society depends upon.

The three rights, also called ‘basic freedoms’, are guaranteed by the Indian constitution.

Article 19(1)(a) guarantees all citizens the right to freedom of speech and expression. Art. 19 (1) (b) enjoins that all citizens have the right to assemble peacefully and without arms. And Art. 19 (1) (c) provides that all citizens have the right to form associations. Civic space rights are also guaranteed by Articles 19, 21 and 22 of the International Covenant on Civil and Political Rights (ICCPR) (1976), to which India is a signatory. It is these rights of citizens that have been under particular attack in India in recent years, that signal India’s democratic backsliding. It is in these circumstances that India is now being called ‘the largest illiberal democracy’.<sup>6</sup> The three ‘basic freedoms’, and attacks on them, will be the focus of this chapter, as it explores the constricted civic space in India, especially for its religious minorities.

### **Objectives**

This study attempts to explore and document trends in how civic space in India has regressed in recent years, and how that is impacting minorities particularly. Specifically, the study aims to:

- Map emerging trends of the shrinking civic space in India; analyse the reasons for the rapid backslide in recent years; identify measures that are deployed to repress dissent; and also examine how constitutional and legal safeguards built into democratic structures have broken down, enabling the backslide.
- In doing this, also identify the costs of the closing of civic space on minority groups in particular, and on the nation as a whole.

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<sup>6</sup> ‘India Now the World’s Largest Illiberal Democracy, Says Financial Times US Editor’, *The Wire*, June 30, 2020, <https://m.thewire.in/article/video/karan-thapar-edward-luce-interview-india-illiberal-democracy/amp>.

### **Methodology and Research**

This report on the narrowing civic space in India is exploratory, seeking to map the changing terrain of civic action and expression, especially as it concerns religious minorities, against the backdrop of the rising trend of majoritarian nationalism that also has elements of deepening authoritarianism. It seeks to examine, on each of the three ‘basic freedoms’ of association, peaceful assembly, and expression of opinion, the quality of civic space in the country, and then focus on the closing civic space for minorities, specifically for Muslims in recent months. The report concludes with an examination of the case of Muslim-majority Kashmir as one of near erasure of civic space.

Research for the study involved documenting the hardening of legislative and administrative provisions for regulating non-governmental organisations (NGOs) and their opportunities to finance their activities, including through foreign funding, besides a disproportionate scrutiny of NGO leaders and human rights and information activists. It also explored restrictions placed on citizens’ rights to peaceful assembly and dissent, the use of excessive force, including lethal force to quell protests, and reprisals against human rights defenders (HRD) and dissenters. Research also involved tracking restrictions placed on the press and intimidation of journalists and also restrictions on citizens’ rights to information and transparency. This mapping was conducted along with an examination of how state and society have been mobilised by the ruling dispensation to target democratic dissent and India’s minorities, besides creating a legitimising discourse in support of the anti-democratic measures. Finally, a key informant survey was conducted in August 2020 among key stakeholders—journalists, academics and researchers, retired bureaucrats, rights lawyers and activists, and political commentators—on their perceptions of recent trends in India concerning the three ‘basic freedoms’ (See Annex A at the end of the chapter).

Data collection involved review of the literature—media accounts mostly—but also primary research, examining administrative and court orders, and some interviews with key informants. The key informants were mostly thematic experts as well as NGO and

civil society actors and grassroots HRDs. Accounts of the impact of restrictions on minority groups and defenders, too, relied on a review of the literature, including reports of recent episodes of violence, besides media accounts and interviews.

This introductory section is followed by Section 3, which provides, as background, a broad-brush picture of the narrowing of civic space in the country on the three counts of association, peaceful assembly, and expression. Section 4 is more to the point, seeking to provide an in-depth account of the groundswell of the anti-Citizenship Amendment Act (CAA) protests from late December 2019 and the use of excessive force by authorities to quell it, the former being the high point of civic action by Indian Muslims, with newfound confidence and vigour, and the latter emblematic of harsh measures by the central and some state governments to try to nip in the bud democratic dissent by minorities. These provide lessons for how religious minorities have been a particular target of the narrowing civic space in India. Section 5, on the case of Muslim-majority Kashmir, provides a close look at the travails of civic space in the restive region, historically limited, and since August 2019 experiencing near erasure, with authorities enforcing a months-long communication blackout, resorting to mass detentions, and using excessive force, all to crush dissent. Section 6 concludes with lessons and a set of recommendations.

### **Narrowing Civic Space in India**

Civic space—the space for civil society—in India has, especially since 2014, been under stress with the coming to power of the BJP, a right-of-centre grouping, that has since the late 1980s vocally espoused a Hindumajoritarian vision for the country, striking at the secular and inclusive character of the constitution and polity. It has also driven a neo-liberal agenda, favouring pro-business policies, and is often accused of promoting crony capitalism. In 2014, BJP was voted to power with a clear majority—the first time ever—under Narendra Modi, former chief minister of the western state of Gujarat. Modi has been a controversial figure, accused by civil society groups and minorities for his role in the mass violence in the state in 2002 that resulted in over 2000 deaths, mostly of Muslims.

Gujarat under Modi was also seen as a pro-business bastion. BJP rule since 2014 has seen the parallel strengthening of authoritarian tendencies in India, marked by executive overreach and a weakening of ‘checks and balance’ institutions. A CIVICUS report in 2017 noted how this was impacting citizen’s ability to engage in democratic dissent, concluding that the quality of democracy had shrunk.<sup>7</sup> CSOs that contested the state’s authoritarian practices, the report had noted, were subjected to attacks. These took various forms from denial of registration to CSOs to the withdrawal of permits to others to operate. Targeting the funding of NGOs, CIVICUS found, was a common theme, especially preventing NGOs from receiving foreign funding and suspending accounts of others to prevent them from accessing funds. Groups that stood up to the government’s restrictions faced serious risks: surveillance, threats, and physical attacks, including instances of killings, in attempts to silence them, and send a chilling signal to others. The report also found that the media had often been used to demonise particularly those engaging internationally with smear campaign against activists accused of promoting an anti-national agenda. Journalists were not spared either. Those reporting on government excesses and failures faced intimidation, harassment, and physical attacks. Laws were also often used to restrict freedoms of expressions and online freedoms.

BJP’s attacks against civil society began early in its first term, especially against groups and individuals defending freedoms, standing up to the government’s antipeople policies and practices and majoritarian mobilisation and for the rights of vulnerable groups. In June 2014, the Intelligence Bureau was reported to have submitted a report, titled ‘Impact of NGOs on Development’, to the Prime Minister’s Office where it claimed foreign-funded NGOs

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<sup>7</sup> CIVICUS, *India: Democracy Threatened by Growing Attacks on Civil Society*, [https://www.civicus.org/images/India\\_Democracy\\_Threatened\\_Nov2017.pdf](https://www.civicus.org/images/India_Democracy_Threatened_Nov2017.pdf). See also Meenakshi Ganguly, ‘Threat to India’s Vibrant Civil Society’, *Human Rights Watch*, August 14, 2015, <https://www.hrw.org/news/2015/08/14/threat-indias-vibrant-civil-society>; and Mandeep Tiwana, ‘Squeezing Civil Society Hurts India’s Economy and Democracy’, *Open Democracy*, August 23, 2017, <https://www.opendemocracy.net/en/openindia/squeezing-civil-society-hurts-india-s-economy-and-democracy/>.

had impacted GDP growth negatively by 2-3 percentage points. The report particularly named Greenpeace, describing its work as ‘a threat to national economic security’.<sup>8</sup> In February 2016, Prime Minister Modi claimed that he was a victim of an NGO-led conspiracy. Speaking at a public meeting, he complained:

They conspire from morning to night on ‘how do we finish Modi, how do we remove his government, how do we embarrass Modi?’. But my friends, you have voted me to rid the country of these diseases.<sup>9</sup>

These early attacks against civil society actors had raised concerns among UN agencies, who voiced their worry.<sup>10</sup> Authorities have, however, continued to see civil society as a threat, rather than a partner in the democratic process. The targeting has continued. In August 2019, the central government was reported to be ‘quietly’ launching a drive against ‘subversive’ NGOs to tackle dangers of suspicious foreign investments.<sup>11</sup> Authorities were reported to be questioning the issues raised by NGOs as ‘fourth generation warfare’, even insinuating that Pakistan’s spy agencies were ‘targeting civil society groups’ in India.<sup>12</sup> In September 2020, the central government enacted changes to the existing rules for foreign funding of NGOs, in a move that has been described as sounding the ‘death knell’ for the country’s non-profit sector.<sup>13</sup>

<sup>8</sup> ‘IB Report to PMO: Greenpeace is a Threat to National Economic Security’, *Indian Express*, June 11, 2014, <https://indianexpress.com/article/india/india-others/ib-report-to-pmo-greenpeace-is-a-threat-to-national-economic-security/>.

<sup>9</sup> ‘PM Narendra Modi says he is victim of NGOs’ conspiracy’, *The Economic Times*, February 21, 2016, <https://economictimes.indiatimes.com/news/politics-and-nation/pm-narendra-modi-says-he-is-victim-of-ngos-conspiracy/articleshow/51081446.cms>.

<sup>10</sup> ‘Civil Society in India Remains Vibrant’, *The Hindu*, June 9, 2016, <https://www.thehindu.com/opinion/interview/Civil-society-in-India-remains-vibrant/article14391890.ece>.

<sup>11</sup> ‘Narendra Modi Govt Launches Drive against “Subversive” NGOs to Tackle Dangers of Suspicious Foreign Investments’, *Firstpost*, August 19, 2019, <https://www.firstpost.com/india/narendra-modi-govt-launches-drive-against-subversive-ngos-to-tackle-dangers-of-suspicious-foreign-investments-7188921.html>.

<sup>12</sup> *Ibid.*

<sup>13</sup> ‘Why NGOs Fear the New FCRA Regulations’, *India Today*, September 24,

## **Limiting Right to Association**

### ***NGO Registration***

Authorities have increasingly used a series of measures to target CSOs and limit their activities. The CIVICUS report from 2017 had found that the regulatory regime for CSOs was disproportionate and discriminatory, far stricter than for commercial enterprises. Registration of CSOs had already been an area where restrictions were common. The trend has worsened since 2014 and was noted by 90 per cent of the respondents in the South Asia Collective's key informant survey conducted in August 2020 (See Annex A at the end of the chapter). In several cases, licences of CSOs have been suspended or revoked, and applications for renewal rejected.

CSOs providing legal aid and support to excluded groups and those experiencing human rights violations, including minorities, Dalits, Adivasi, women and human rights defenders, are the ones targeted the most. Those engaging with international human rights mechanisms to highlight the human rights situation in India have particularly been at the receiving end of the government's restrictive actions, demonstrating BJP's scant regard for international human rights regimes, many of which India is a signatory to.

Early in 2020, the central government introduced new regulations providing a shelf life to NGO registration under the Income Tax (IT) Act, making the registration of NGOs under the IT Act valid only for five years, rather than permanently, as was the case before. This implies that the charitable status for registered NGOs—allowing for relaxation in taxation matters, both for the organisation and for donors—was no longer going to be a one-time act, and that NGOs would now need to apply every five years to regain their charitable status for tax purposes, subjecting them to bureaucratic discretion. Under this dispensation, all non-profit organisations in the country were required to apply for fresh registrations under the IT Act by 31 August 2020.

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2020, <https://www.indiatoday.in/india-today-insight/story/why-ngos-fear-the-new-fcra-regulations-1725077-2020-09-24>.

***Foreign Contribution Registration Act (FCRA)***

Of particular concern to most CSOs has been the working of the FCRA to regulate their right to association.<sup>14</sup> Originally enacted in 1976 to curb foreign funding in domestic politics, a more draconian version of the regulation was passed by the Congress-led government in 2010, putting the focus squarely on NGOs, signalling how foreign funding of NGOs has always been targeted in India. The new legislation, which made FCRA registration mandatory for NGOs to receive foreign funding, was put in place after several high-profile environmental organisations came under the scanner for allegedly organising protests against developmental projects. The new FCRA required registrations to be renewed every five years, and also put a cap on the proportion of foreign funds permissible for administrative expenses, essentially allowing authorities to control how NGOs spend their money. The uncertainty and inconsistencies surrounding the procedure for renewal of the FCRA licence has been a major concern for most CSOs.

Since 2014 under the BJP rule, authorities have used the periodic renewal requirement selectively against NGOs working for citizen's rights and freedoms and seen as working to hold the government to account. Many NGOs have lost their licenses solely due to expiration. CIVICUS reported that between 5 May and 9 June 2015, the government cancelled the registration of 4,470 CSOs for violating the FCRA, on grounds that the CSOs had failed to submit their tax returns.<sup>15</sup> In April 2016, a further 9,000 CSOs had their licences cancelled for FCRA violations.<sup>16</sup> The authorities also

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<sup>14</sup> 90% of the respondents in the SAC's key informant survey noted that CSOs have faced further restrictions on the receipt of foreign funds since 2014 (See Annex A at the end of the chapter). Also, G. Sampath, 'Time to Repeal the FCRA', *The Hindu*, December 27, 2016, <https://www.thehindu.com/opinion/lead/Time-to-repeal-the-FCRA/article16946222.ece>.

<sup>15</sup> 'Government Cancels Registration of 4,470 NGOs in Fresh Crackdown', *The Economic Times*, June 9, 2015, <https://economictimes.indiatimes.com/news/politics-and-nation/government-cancels-registration-of-4470-ngos-in-fresh-crackdown/articleshow/47604230.cms>.

<sup>16</sup> 'Home Ministry Cancels Registration of 9,000 Foreign-Funded NGOs', *Hindustan Times*, April 28, 2015, <https://www.hindustantimes.com/india/home-ministry-cancels-registration-of-9-000-foreign-funded-ngos/story-UpnVtwpwSrSjqEdYygiJN.html>.

indicated that they had handed notices to 10,343 CSOs to submit tax returns dating back to 2009 to 2012, and only 229 had responded to this order.

Particularly targeted have been NGOs at the forefront of human rights work with vulnerable minorities and in defence of freedoms, with foreign funding freezes being the weapon of choice, all in the guise of FCRA regulations. These include Navsarjan Trust, working on caste issues; ANHAD on secularism; Greenpeace India, working on land and forest rights and climate change; and Lawyers Collective, Centre for Promotion of Social Concerns (CPSC), Indian Social Action Forum (INSAF), and Amnesty International, all defending civil and political rights.

The targeting has continued. In December 2019, the government informed parliament that as many as 14,500 NGOs had been barred from accessing foreign funding since 2014. The amount of funds raised by Indian NGOs via FCRA also fell from around USD 2.2 billion in 2018 to USD 295 million in 2019.<sup>17</sup> The same year, the central government further tightened the FCRA rules, introducing further restrictions, requiring individual office-bearers of NGOs to declare every five years that they had not been prosecuted or convicted for promoting religious conversions and that they were not likely to engage in 'propagating sedition'.<sup>18</sup> Previously, this was only required of the applicant organisation.

Similar unreasonable elements of the statute had, in 2016, led the UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and Association to note that FCRA was 'not in conformity with international law, principles and standards'.<sup>19</sup>

In September 2020, central government enacted further hardening of the FCRA. The new provisions, among other things,

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<sup>17</sup> '14,500 NGOs Banned from Receiving Foreign Funds: Govt.' *Indian Express*, December 5, 2019, <https://indianexpress.com/article/india/14500-ngos-banned-from-receiving-foreign-funds-govt-6151180/>.

<sup>18</sup> 'Conversion, Sedition in Focus as Government Tightens FCRA Norms', *The Times of India*, September 17, 2017, <https://timesofindia.indiatimes.com/india/conversion-sedition-in-focus-as-government-tightens-fcra-norms/articleshow/71159079.cms>.

<sup>19</sup> 'India's FCRA Does Not Conform to International Standards', *Down to Earth*, April 27, 2016, <https://www.downtoearth.org.in/news/economy/india-s-fcra-does-not-conform-to-international-standards-un-special-rapporteur-53743>.

prohibit the sharing of foreign funds with other organisations or individuals—a move that will hamper the functioning of grassroots organisations—and further restricts the proportion of foreign funds that can be used for administrative expenses, a move that is likely to hit salaries of those engaged in the non-profit sector. It also raises the bar on renewal of registration.

### ***Using Enforcement Agencies to Intimidate***

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. These have included Lawyers Collective, Centre for Justice and Peace (CJP), and Centre for Protection of Social Concerns (CPSC), all vocal voices against authoritarianism and in support of individual freedoms (See Annex C at the end of the chapter). The ED and CBI have often been misused by governments in power to target political and ideological adversaries, leading the Indian Supreme Court to once term the CBI as a ‘caged parrot’.<sup>20</sup> For the government to deploy criminal investigation agencies against NGOs working to uphold freedoms and liberty, to implicate them in fabricated cases, with the intention to browbeat them says much about authorities’ intentions and methods. These ‘raids’ as they are termed, by elite investigation agencies, in leaked reports to a compliant media have the intended chilling effect on the rest of civil society, besides the effect they have on the NGOs and activists in question.

### ***A Climate of Fear for Human Rights Workers***

Along with attempts to prevent groups working on critical needs, human rights workers have also reported being subject to a campaign of threats and intimidation, by state agencies and ideological groups aligned to them. Prominent activists and human rights workers have faced threats. These have included Soni Sori

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<sup>20</sup> ‘A “Caged Parrot”—Supreme Court Describes CBI’, *Reuters India*, May 10, 2013, <https://in.reuters.com/article/cbi-supreme-court-parrot-coal/a-caged-parrot-supreme-court-describes-cbi-idINDEE94901W20130510>.

(2016) working on Adivasi rights and Bela Bhatia (2017) also working with Adivasis in Chattisgarh state, and Teesta Setalvad, since 2014, for her work with the survivors of communal violence in Gujarat. Surveillance has been a common tool. Snooping attempts against journalists, lawyers, academics, and activists by possible government-backed actors were recently revealed by Amnesty, Google, and WhatsApp.<sup>21</sup> Digital forensics examinations revealed that such operations have possibly led to the remote planting of evidence for use during fabricated prosecutions.<sup>22</sup> Ordinary provisions in the Information Technology Act and the Telegraph Act also empower authorities to engage in widespread surveillance, with a recent report revealing that more than 100,000 phone interception orders are issued every year.<sup>23</sup> India's surveillance regime, the report noted, is 'opaque', 'run solely by the Executive' and contains 'no provisions for independent oversight'.<sup>24</sup>

## **Curtailling Freedom of Expression and Opinion**

### ***Attacks on Journalists and Activists***

India's performance in global press freedom indices has historically been among the worst in the democratic world (Table 1). In 2020, the Paris-based media network Reporters Sans Frontier (RSF) noted that Prime Minister Modi had 'tightened his grip' over the media

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<sup>21</sup> 'India: Human Rights Defenders Targeted by a Coordinated Spyware Operation', *Amnesty International*, June 15, 2020, <https://www.amnesty.org/en/latest/research/2020/06/india-human-rights-defenders-targeted-by-a-coordinated-spyware-operation/>; 'Google Warned up to 500 Indian Users That They Were Targeted by "Government-Backed Actors"', *The Wire*, November 27, 2019, <https://thewire.in/tech/google-warning-india-users>; and Shoaib Danyal, 'Explainer: How WhatsApp Was Hacked to Spy on Indian Activists and Lawyers and Who Could've Done It', *Scroll*, November 1, 2019, <https://scroll.in/article/942300/explainer-how-whatsapp-was-hacked-to-spy-on-indian-dissidents-and-who-did-it>.

<sup>22</sup> Martand Kaushik and Anjaneya Sivan, 'Bhima Koregaon Case: Prison-Rights Activist Rona Wilson's Hard Disk Contained Malware That Allowed Remote Access', *The Caravan*, March 12, 2020, <https://caravanmagazine.in/politics/bhima-koregaon-case-rona-wilson-hard-disk-malware-remote-access>.

<sup>23</sup> 'Central Govt Taps Over 100,000 Phones a Year: Report', *Outlook*, September 4, 2014, <https://www.outlookindia.com/newswire/story/central-govt-taps-over-100000-phones-a-year-report/858404>.

<sup>24</sup> Ibid.

and forced it to ‘toe the Hindu nationalist government’s line’.<sup>25</sup> India has seen a number of violent attacks against journalists who have reported against powerful state and corporate interests. These have resulted in at least 18 killings since 2014, including that of Gauri Lankesh, a high-profile critic of right-wing Hindu extremism.<sup>26</sup> Lankesh’s assassins, who shot her dead outside her home, were later linked to at least one other high-profile assassination of critics of Hindu nationalism.<sup>27</sup>

India’s journalists have increasingly been the targets of doctored prosecutions as well. A recent report revealed that during the national Covid-19 lockdown between 25 March and 31 May 2020, at least 55 Indian journalists faced arrest, physical assaults, destruction of property, threats, or registration of FIRs.<sup>28</sup> On 13 May, the Editors Guild of India condemned a ‘growing pattern of misuse of criminal laws to intimidate journalists in different parts of the country’. This included Sidharth Vardarajan, the editor of *The Wire*—an electronic media platform seen to be critical of government<sup>29</sup>—and most recently, Prashant Kanojia, who was arrested for allegedly tweeting objectionably against a Hindutva leader.<sup>30</sup> Journalists who do not toe the government line, especially women, are frequently the victims of online harassment campaigns. Rana Ayyub, a reporter who has written on Modi’s and Home Minister Amit Shah’s alleged

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<sup>25</sup> ‘India Ranks 142nd on Global Press Freedom Index’, *The Economic Times*, April 22, 2020, <https://economictimes.indiatimes.com/news/politics-and-nation/india-ranks-142nd-on-global-press-freedom-index/articleshow/75279460.cms>.

<sup>26</sup> Ibid.

<sup>27</sup> ‘Gauri Lankesh and MM Kalburgi Killed Using Same Gun, Reveals Forensic Report’, *News18 India*, June 8, 2018, <https://www.news18.com/news/india/gauri-lankesh-mm-kalburgi-killed-using-same-gun-reveals-forensic-report-1772089.html>.

<sup>28</sup> ‘55 Indian Journalists Arrested, Booked, Threatened for Reporting on Covid-19: Report’, *The Wire*, June 16, 2020, <https://thewire.in/media/covid-19-journalists-arrested-booked-report>.

<sup>29</sup> ‘FIR Filed Against “The Wire” Editor for Allegedly Making “Objectionable Comment” About Adityanath’, *Scroll*, April 2, 2020, <https://scroll.in/latest/957945/fir-filed-against-the-wire-editor-for-allegedly-spreading-fake-news-against-adityanath>.

<sup>30</sup> ‘UP Police Arrests Journalist Prashant Kanojia in Delhi Over “Objectionable” Tweet on Hindu Army’, *The Print*, August 18, 2020, <https://theprint.in/india/up-police-arrests-journalist-prashant-kanojia-in-delhi-over-objectionable-tweet-on-hindu-army/484274/>.



culpability in the 2002 Gujarat riots, found herself on a global list of 10 journalists presently in danger.<sup>31</sup>

There was unanimous agreement among the journalists who participated in the SAC's key informant survey that Indian journalists now largely engage in self-censorship while reporting on politically sensitive issues (See Annex A at the end of the chapter).

### ***Restricting Access to Information***

Access to information has also been affected, with the Delhi-based Software Freedom Law Centre reporting that India has seen a dramatic rise in yearly internet shutdowns, from six times in 2014 to 106 in 2019.<sup>32</sup> The Indian government has also been noted to make the most number of content takedown requests to social media platforms, and at least 50 people—mostly Muslims—were arrested for social media posts in just 2017 and 2018 alone.<sup>33</sup> In July 2019, India's vaunted Right to Information (RTI) Act—ranked the seventh strongest in the world—was tampered with, with the tenures and salaries of the Chief Information Commissioner (CIC) and the State Information Commissioners brought under the control of the central government, a move that could potentially

<sup>31</sup> 'Rana Ayyub on Global List of Journalists Under Threat: Abuse of Those Pursuing Truth Must Be Stemmed with Government Action', *Firstpost*, August 8, 2019, <https://www.firstpost.com/india/rana-ayyub-on-global-list-of-journalists-under-threat-abuse-of-those-pursuing-truth-must-be-stemmed-with-govt-action-6390521.html>.

<sup>32</sup> 'Internet Shutdown Tracker', Software Freedom Law Center, accessed July 16, 2020, <https://internetsutdowns.in>.

<sup>33</sup> Ashwaq Masoodi, 'Prisoners of Memes, Social Media Victims', *Livemint*, December 5, 2018, <https://www.livemint.com/Politics/sWTiTg8jscRZpKwSPN25UN/Prisoners-of-memes-social-media-victims.html>.

make them susceptible to political pressure. Regardless of the robustness of the legislation, India's information activists continue to operate in a highly hostile environment. A Commonwealth Human Rights Initiative (CHRI) tracker recorded 86 murders of India's RTI activists since its enactment in 2005, with 44 (51 per cent) occurring since the assumption of power by the BJP in 2014.<sup>34</sup>

### ***Censoring Inconvenient Platforms, Providing Free Ride to Hate Amplifiers***

Instances of censorship of TV news channels have also come to light, the most recent example being the temporary bans on two Kerala-based channels for being 'critical towards Delhi Police and RSS' during its coverage of the anti-Muslim violence in Delhi in February 2020. Earlier, in 2016, the Indian government ordered a one-day ban on NDTV India—a Hindi news channel known for being critical of the BJP—for revealing 'strategically sensitive information' during its coverage of a militant attack on an Indian army base.<sup>35</sup> All three bans were revoked, but there have not been any instances of similar actions being taken against pro-BJP channels that regularly broadcast hateful content. Despite their often violating broadcast norms, no restrictions have been placed on these media houses by authorities, rather they have been rewarded, with, among other things, increased access in the form of 'exclusive interviews' and increased government advertisement spending.<sup>36</sup> Critical media on the other hand, such as NDTV, saw four residences and offices connected to its owners being raided in 2017 over financial fraud allegations. Earlier, NDTV was reportedly forced to lay off a fourth of its staff after government advertisements—a significant chunk of most news outlets' revenue—were withdrawn. Withholding of government advertisement has been used to target other critics

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<sup>34</sup> 'Hall of Shame—Mapping Attacks on RTI Users', Commonwealth Human Rights Initiative, accessed July 16, 2020, <http://attacksonrtiusers.org/Home/Issue/>.

<sup>35</sup> 'Why Was NDTV India Banned and What Does the Law Say?' *Hindustan Times*, November 5, 2016, <https://www.hindustantimes.com/india-news/why-was-ndtv-india-banned-and-what-does-the-law-say/story-Rp7oyyYZ0MFzbV6omyMnbO.html>.

<sup>36</sup> Praveen Donthi, 'The Image Makers: How ANI Reports the Government's Version of Truth', *The Caravan*, March 1, 2019, <https://caravanmagazine.in/reportage/ani-reports-government-version-truth>.

as well.<sup>37</sup> With critics facing pushback and friendly media outlets being rewarded, observers have noted that the major players in India's print and broadcast media landscape no longer represent a wide range of political perspectives (See Annex A at the end of the chapter).

### ***Attacks on Academic Freedoms***

Universities, especially those with a reputation for fostering enquiry and independence, too, have been targeted. An academic and observer noted that the BJP government has made a concerted attempt to curb academic freedom:

Universities have been under attack, especially those engaged in critical thinking and research—particularly universities like JNU whose faculty and students have criticised the ruling dispensation.<sup>38</sup>

Another teacher at a publicly funded university said that university teachers who refuse to toe the government line have faced other forms of pushback:

At central universities that have off-campuses, teachers are often threatened with the possibility of transfers to far-off places like Kashmir, Kerala and Lucknow. Promotions are also withheld.<sup>39</sup>

The academic pointed out that beyond such overt targeting, the government has also heavily slashed funding for higher education, from 0.6 per cent of GDP in 2013-14 to 0.2 per cent in 2018-19.<sup>40</sup> This has coincided with the continuing rise of the Akhil Bharatiya Vidyarthi Parishad (ABVP), the student wing of the ruling BJP and

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<sup>37</sup> Adam Withnall, 'How Modi Government Uses Ad Spending to "Reward or Punish" Indian Media', *The Independent*, July 7, 2019, <https://www.independent.co.uk/news/world/asia/india-modi-government-media-ad-spending-newspapers-press-freedom-a8990451.html>.

<sup>38</sup> An academic and observer, email interview, New Delhi, June 24, 2020.

<sup>39</sup> <name withheld>, personal interview, New Delhi, June 25, 2020.

<sup>40</sup> An academic and observer, email interview, New Delhi, June 24, 2020.

the Hindu nationalist Rashtriya Swayamsevak Sangh (RSS). ABVP has often been reported to have unleashed violence in university campuses.<sup>41</sup>

### **Curtailing Freedom of Assembly and Protest**

Although the right to peaceful assembly and protest has been guaranteed under Article 19(1)(b) of the Indian constitution, it is not unqualified. The ‘reasonable restriction’ provision, followed by court rulings, have historically allowed authorities to impose checks, including by resorting frequently to penal code provisions (Section 144 of the Code of Criminal Procedure 1973) to prevent free exercise of the constitutional right. Right to protest today is an endangered right in India. Since 2014, India has seen several examples of the state—particularly in states where the BJP is in power, or where the BJP has control over police forces—preventing peaceful protests, and cracking down on dissenters even where those were peaceful. These included country-wide protests by workers against repressive labour laws and economic policies. In July 2016, Dalits protested against the lynching of seven Dalit persons by cow-vigilante groups in Una city in Gujarat. In April 2018, country-wide protests were held against the Supreme Court’s order diluting the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, the principal hate and atrocity crime law in the country. In November 2019, Adivasis protested in Delhi against the Supreme Court’s decision ordering the eviction of more than a million forest-dwellers from forest land. Earlier, in January 2018, a celebratory gathering by Dalits in Bhima Koregaon in Maharashtra came under attack allegedly by a Hindutva mob, and subsequent protests resulted in one death and over 300 arrests.<sup>42</sup> And in May 2018, in Thoothukudi district in Tamil Nadu,

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41 Harshita Murarka, ‘Ramjas Not Alone, ABVP has a Legacy of Violence’, *The Quint*, February 23 2017, <https://www.thequint.com/news/politics/delhi-university-ramjas-college-not-alone-abvp-has-history-of-violence-like-rohith-vemula-jnu-kanhaiya-kumar>.

42 ‘From Pune to Paris: How a Police Investigation Turned a Dalit Meeting into a Maoist Plot’, *Scroll*, September 2, 2018, <https://scroll.in/article/892850/from-pune-to-paris-how-a-police-investigation-turned-a-dalit-meeting-into-a-maoist-plot>.

13 persons were shot dead and hundreds injured by the police while peacefully protesting against a copper smelting plant owned by a subsidiary of industrial giant Vedanta.<sup>43</sup> Authorities, especially in BJP-ruled states, have followed a pattern across these protests to try to prevent this exercise of freedom of peaceful assembly. Prohibitory orders on gatherings were regularly coupled with blanket internet shutdowns, before unleashing excessive force on protesters, resulting in much violence, including fatalities.

Observers say that although no new laws have been enacted, there is now a greater inclination towards the abuse of existing laws that have historically allowed governments to crack down on dissent. Courts interpreting the constitutional rights of free expression, association, and peaceful assembly as all being subject to ‘reasonable restrictions’ have aided in this restriction. ‘In its second term, after being voted back to power in 2019, with a bigger majority, the BJP government seems to have sharpened the securitisation of laws, frameworks and policies’,<sup>44</sup> noted an academic, a point echoed by a Delhi-based lawyer, who concurs, ‘...there is a definite policy shift. There is an unspoken directive to use the law in a particular way that results in the consolidation of power.’<sup>45</sup> Some of the oft-used and abused laws are discussed next.

Section 144 is a colonial-era provision of the Code of Criminal Procedure (CrPC), providing officials the authority to prohibit the assembly of five or more persons within their jurisdiction in exigent circumstances. This provision, which is authorities’ go-to provision to prevent protests, was used heavily to crack down on protests against CAA and in Kashmir to silence protests against the revocation of autonomy.

Prohibitory orders under Section 144 have increasingly been imposed in conjunction with internet shutdowns—a phenomenon

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<sup>43</sup> ‘Thoothukudi Firing Victims Killed by Shots to Head, Chest; Half from Behind: Postmortem Reports’, *The New Indian Express*, December 22, 2018, <https://www.newindianexpress.com/states/tamil-nadu/2018/dec/22/thoothukudi-firing-victims-killed-by-shots-to-head-chest-half-from-behind-postmortem-reports-1915164.html>.

<sup>44</sup> An academic and observer, email interview, New Delhi, June 24, 2020.

<sup>45</sup> A Supreme Court lawyer, email interview, New Delhi, June 23, 2020.

that received procedural backing in 2017.<sup>46</sup> Despite experts and studies warning that internet shutdowns, in fact, ‘encourage a tactical shift to (protest) strategies that are less orderly, more chaotic and more violent’,<sup>47</sup> India continues to impose more internet shutdowns than any other democracy in the world.

Authorities often use serious provisions of the penal code to quell dissent. India’s colonial-era sedition law (Section 124A of the Indian Penal Code), once described by Gandhi as ‘the prince among the political sections of the Indian Penal Code designed to suppress the liberty of the citizen’,<sup>48</sup> has been consistently used to suppress dissent. An analysis in 2019 showed a spike in sedition arrests since the beginning of 2014, with 58, 73, and 48 fresh instances recorded in 2014, 2015 and 2016 respectively.<sup>49</sup> More recent examples of sedition arrests include that of Sharjeel Imam and Amulya Leone, both students who had made speeches against the CAA (See Annex B at the end of the chapter).

There are other draconian laws often deployed by authorities against dissidents and human rights workers, most notably the Unlawful Activities (Prevention) Act (UAPA) and the National Security Act (NSA), and sedition provisions of the Indian Penal Code (IPC), all potentially inviting life imprisonment. The UAPA particularly has draconian procedural provisions, including extended police and judicial custody, no right of bail, and reversal of burden of proof. Authorities have of late been increasingly resorting to the UAPA—India’s principal anti-terror law—to

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<sup>46</sup> ‘New Rules on Temporary Suspension of Telecom Services in Case of Public Emergency or Public Safety’, *Software Freedom Law Center*, August 23, 2017, <https://sflc.in/new-rules-temporary-suspension-telecom-services-case-public-emergency-or-public-safety>.

<sup>47</sup> Jan Ryzdak, ‘In Times of Unrest, Social Media Shutdowns Endanger Public Safety’, *The Wire*, May 2, 2019, <https://science.thewire.in/culture/media/crisis-social-media-shutdowns-public-safety/>.

<sup>48</sup> Arunav Kaul, ‘The best tribute to Gandhi in his 150th birth anniversary year? Strike down the sedition law’, *Scroll*, October 9, 2019, <https://scroll.in/article/939832/the-best-tribute-to-gandhi-on-his-150th-birth-anniversary-strike-down-the-sedition-law>

<sup>49</sup> Chitranshul Sinha, ‘NCRB Report is An Argument in Repealing Law Against Sedition’, *Mumbai Mirror*, October 24, 2019, <https://mumbaimirror.indiatimes.com/opinion/columnists/by-invitation/ncrb-report-is-an-argument-in-repealing-law-against-sedition/articleshow/71730564.cms>.

‘exterminate both dissent and dissenters’.<sup>50</sup> An amendment to the law in 2019 gives the state the authority to declare individuals terrorists and seize their properties even before their guilt has been established by a court of law. UAPA provisions have been invoked to detain dissenters protesting atrocities against Dalit and Adivasi, as well as against the CAA, among others, often just for making peaceful speeches.<sup>51</sup>

Elsewhere, dissenters have faced the NSA, a preventive detention law against disrupting national security and public order, that allows police to detain one without charge for up to a year. In recent times, Kafeel Khan, a prominent Muslim voice, and Chandra Sekhar Azad, a Dalit leader, have both been held under the NSA, both in BJP-ruled Uttar Pradesh. Amnesty International recently noted that those charged under these anti-democratic laws are rarely convicted.<sup>52</sup> However, the judicial process itself is considered punishment enough. By the time the accused are acquitted or discharged, ‘their lives and careers have long been ruined, given their prolonged incarceration and persecution at the hands of the state’.<sup>53</sup>

### **The Closing of Civic Space for Minorities**

If civic space has been narrowing for citizens as a whole, for religious minorities, especially Muslims and those working with them, there seems to have been attempts recently to effectively close it off. This was confirmed nearly unanimously by participants in the key informant survey (See Annex A at the end of the chapter).

Participation, including in the political and economic spheres,

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<sup>50</sup> ‘Misuse of UAPA by Union Government During Covid-19 Pandemic’, *NewsClick*, May 1, 2020, <https://www.newsclick.in/UAPA-Misuse-Modi-Govt-Crackdown-Activists-Organisations-Covid-19-Lockdown>.

<sup>51</sup> Kapil Sibal, ‘UAPA: When Laws Turn Oppressive’, *Hindustan Times*, June 30, 2020, <https://www.hindustantimes.com/analysis/uapa-when-laws-turn-oppressive/story-d9d7OEO50LQjLZs3Ba5pzI.html>.

<sup>52</sup> ‘Covid-19 Pandemic: Crackdown on Dissent Putting Lives at Immediate Risk in India’, *Amnesty International India*, May 1, 2020, <https://amnesty.org.in/news-update/covid-19-pandemic-crackdown-on-dissent-putting-lives-at-immediate-risk-in-india/>.

<sup>53</sup> Mahtab Alam, ‘India’s “Extraordinary” Laws Need to Be Revoked, Not Revamped’, *The Wire*, February 16, 2020, <https://thewire.in/rights/uapa-sedition-psa-nsa-extraordinary-laws>.

among Muslims has historically been limited. This is attributed to various causes, among them the poor ability of Muslim citizens and Muslim-focused CSOs to organise, participate and communicate without hindrance. This has resulted in their limited ability to claim rights as equal citizens and influence the political and social structures around them. Part of the problem has been the narrow policy focus for ‘Muslim’ outcomes, despite ample evidence to show poor performance on all counts of development, including by the government-appointed Sachar Committee in 2006.<sup>54</sup> The upshot of these barriers has been the poor access to resources and capacity for Muslim citizens and groups.<sup>55</sup> Often, policy-making has also been hostile to a Muslim focus.<sup>56</sup> The result of these ambiguous efforts has been along the expected lines—with little improvement in the condition of marginalised Muslims.<sup>57</sup>

Similarly, Muslim representation in state structures has always been poor. A stock-taking of Muslim representation in decision-making positions across several sectors makes for a depressing reading. Against a 14 per cent share of the national population, Muslim representation in the lower house of the parliament is currently 4.9 per cent. Similar is the situation among the permanent

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<sup>54</sup> Centre for Equity Studies, *Promises to Keep—Investigating Government’s Response to Sachar Committee Recommendations* (New Delhi: Centre for Equity Studies, 2011 rev. 2014), 94, [http://www.accountabilityindia.in/sites/default/files/document-library/promises\\_to\\_keep\\_investigating\\_governments\\_response.pdf](http://www.accountabilityindia.in/sites/default/files/document-library/promises_to_keep_investigating_governments_response.pdf).

<sup>55</sup> A study of over 350 NGOs working with Muslims from across eight states revealed that while over 70 per cent of NGOs headed by non-Muslims had access to international funds, only 30.5 per cent of those headed by Muslims had similar access. Likewise, nearly 50 per cent of NGOs headed by non-Muslims had accessed Indian donor agencies, while just over 21 per cent of Muslim-headed NGOs have this access. See Farah Naqvi, *Working With Muslims: Beyond Burqa and Triple Talaq* (Gurgaon: Three Essays Collective, 2018).

<sup>56</sup> Research has shown, for instance, that implementation of Multi-sectoral Development Programme (MSDP)—the flagship minority development programme created out of the Sachar Committee process—is seen to be labouring between seeking to fill development gaps suffered by Muslims/Muslim concentrated pockets and the desire of authorities not to be seen to cater exclusively to Muslim needs.

See Centre for Equity Studies, *Promises to Keep—Investigating Government’s Response to Sachar Committee Recommendations* (New Delhi: Centre for Equity Studies, 2011).

<sup>57</sup> Summary and Recommendations of the Kundu Committee, 4th December 2014, <https://twocircles.net/2014dec04/1417692480.html>.

bureaucracy: only 3.7 per cent successful entrants to the central civil service in its last round of recruitment were Muslim, while none of the over 28 state police chiefs and state chief secretaries, the senior-most state-level civil servant, currently, is Muslim. Only one of the 33 judges of the Supreme Court is Muslim, whilst there is no Muslim member 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 similar zero Muslim representation on the board of top corporations, banks, public sector enterprises, as well as media houses (print as well as TV).<sup>58</sup> As data on representation in the parliament and public sector jobs shows, these current trends are more the norm, historically, than exception.

Poor participation and representation have negatively impacted realisation of democracy among and for Muslims. Citizen activism, public vigilance, informed public opinion, and social associations among Muslims—all markers of robust civic space—have historically been poor as a result. Mobilisation against authoritarianism too has been weak, despite long-standing discrimination and a history of violence, targeting Muslims.<sup>59</sup>

BJP's assuming power nationally in 2014 unveiled a new and now frontal attack on religious minorities and other vulnerable groups. This has had a chilling effect on civic space for Muslims and Muslim-community-based organisations and activists specifically. Hate crimes against minorities have seen a spike—taking the form of mob lynching and vigilante violence against Muslims, Christians, and Dalits. BJP also strengthened and expanded a series of discriminatory laws and measures that target religious minorities. These include anti-conversion laws, blamed by human rights groups for empowering Hindutva groups to 'conduct campaigns of harassment, social exclusion and violence against Christians,

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<sup>58</sup> 'Muslim Representation in Governing Body of Prominent Institutes of India: 14 Years of Sachar Committee', *Ars Longa, Vita Brevis*, accessed July 16, 2020, <https://rajatdutta13.blogspot.com/2020/05/muslim-representation-in-governing-body.html?m=1>.

<sup>59</sup> Mushirul Hasan, *Legacy of a divided nation. India's Muslims since Independence* (New Delhi: Oxford University Press, 2001).

Muslims, and other religious minorities across the country'.<sup>60</sup> Laws ostensibly meant for the protection of cows continue to provide institutional backing for similar campaigns against Muslims and Dalits. In Assam, the publication of the draft National Register of Citizens (NRC) in July 2018—through an administrative process rife with discriminatory procedures and practices, aimed at weeding out 'foreigners'—left over 1.9 million persons facing the possibility of mass disenfranchisement. Muslims were feared to be its principal victims.

The situation has exacerbated significantly since BJP returned to power with a 'brute majority' in May 2019. In quick succession, it enacted a slew of measures aimed at signalling to Muslims particularly its will to brutally subjugate. First was the outlawing of a form of instant divorce,<sup>61</sup> which in the process made it easier to criminalise Muslim men. Next was the abrogation of Article 370 of the constitution, taking away the autonomy of Jammu and Kashmir, the only Muslim-majority state in the country. Soon after, final NRC for Assam was published in August 2020, leaving out 1.9 million persons, ratcheting up fears of mass statelessness in Assam. BJP leaders also claimed credit for the final judgement delivered by the Supreme Court in the long-standing dispute to a claim to the site of the demolished Babri mosque in the city of Ayodhya in Uttar Pradesh, having been settled in favour of Hindu parties that had demolished the mosque in 1992.<sup>62</sup> These discriminatory measures were accompanied by authorities signalling that they would not tolerate any expressions of opposition against the measures that were patently illiberal. The Babri Masjid verdict of the Supreme

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<sup>60</sup> United States Commission for International Religious Freedom, 'Annual Report 2020: India' (USA: USCIRF, 2020), accessed July 16, 2020, <https://www.uscifr.gov/sites/default/files/India.pdf>.

<sup>61</sup> Triple talaq, a form of unilateral divorce that allowed Muslim men to divorce their wives by uttering the word 'talaq' thrice, was declared unconstitutional by the Supreme Court in 2017. A law enacted in 2019 went a step further and criminalised triple talaq, prescribing a jail term for up to 3 years for men who engage in the practice.

<sup>62</sup> It was claimed that the Babri Mosque had been built centuries ago by demolishing a structure of Hindu significance at the exact site of Lord Rama's birth place. In its judgement the Supreme Court of India held the demolition illegal.

Court was followed by days of imposition of curfews in large parts of Uttar Pradesh, invoking the colonial era Section 144 CrPC, to prevent protests.

In December 2019, an amendment in the Citizenship Act was passed, which opened a pathway for a category of illegal immigrants from neighbouring countries,<sup>63</sup> but specifically leaving out Muslims. In the run up to the legislation, the government also announced plans to create a National Register of Indian Citizens (NRC)—essentially an extension of the Assam NRC to the whole of the country—with senior functionaries and party leaders making much of their assurance to those who would be excluded from the NRC to make use of the provisions of the Citizenship Amendment Act 2019 (CAA), towards reclaiming Indian citizenship, whilst ‘Muslim infiltrators’ would be detained and deported. The CAA has been described by the UN as ‘fundamentally discriminatory’<sup>64</sup> besides falling foul of India’s secular constitution. It has been identified as having the potential to cause mass statelessness



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<sup>63</sup> Hindus, Buddhists, Jains, Sikhs, Parsis and Christians from three Muslim majority community Pakistan, Afghanistan and Bangladesh.

<sup>64</sup> United Nations, ‘New Citizenship Law in India “Fundamentally Discriminatory”’: UN Human Rights Office’, December 13, 2019, <https://news.un.org/en/story/2019/12/1053511>.

among India's 200-million-strong Muslim community, when worked together with the NRIC.<sup>65</sup>

The potential dangers of the CAA-NRIC nexus galvanised India's Muslims and led to widespread protests against the measures across the country. Sparked by anti-CAA/NRIC protests by students in Delhi that were met with brute force by authorities, mass demonstrations soon spread to the rest of India. Shaheen Bagh, a poor Muslim ghetto in capital Delhi, where a spontaneous sit-in protest was first organised in December 2019, became the proverbial bastion of resistance against CAA-NRIC, with women leading the effort, inspiring similar sit-ins in Muslim concentrations across the country. Many hailed the anti-CAA/NRIC mass resistance as a 'political awakening',<sup>66</sup> and Shaheen Bagh as 'the beating heart of India's democracy'.<sup>67</sup> These Muslim-led protests, with majority of participants being women, in towns big and small and villages, supported by a coalition of progressive student and civil society groups and opposition parties, became—for as long as they lasted anyway—occasions for citizens to reclaim the idea of India as a secular democratic republic, amid the majoritarian upsurge. Claiming their Indian citizenship in the most visible manner, as Muslims and as Indians, protesters not just demanded abrogation of the CAA, but also their rights as equal citizens to participate in the political process. Shaheen Bagh was celebrated as the moment when Indian Muslims dared to find their voice, against further marginalisation. It was also hailed as 'India's civil society moment'.<sup>68</sup>

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<sup>65</sup> 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>.

<sup>66</sup> Hannah Ellis-Petersen and Shaikh Azizur Rahman, "Modi is Afraid": Women Take Lead in India's Citizenship Protests', *The Guardian*, January 21, 2020, <https://www.theguardian.com/world/2020/jan/21/modi-is-afraid-women-take-lead-in-indias-citizenship-protests>.

<sup>67</sup> Dilip Bobb, 'India's Shaheen Bagh Moment', *India Legal Live*, January 1, 2020, <https://www.indialegalive.com/viewpoint/indias-shaheen-bagh-moment>.

<sup>68</sup> Neera Chandhoke, 'The Strength of Civil Society is its Spontaneity, Collective Mobilisation', *Indian Express*, January 31, 2020.



### Using Excessive Force to Shut Down Dissent

These assertions by and outpourings of support of Muslim rights saw swift and violent retaliation by the state, demonstrating the traditional hostility against Muslim assertion, only without any mitigation now. In Assam, the first state to witness anti-CAA protests, at least five persons were killed in police firings.<sup>69</sup> Internet services were also blocked for over a week. In Karnataka, two protesters were shot dead by the police, who also reportedly lobbed tear gas shells inside a hospital.<sup>70</sup> The BJP is in power in both Assam and Karnataka. At the same time, student protesters were also targeted. On 15 December 2019, police forces in the states of Uttar Pradesh (UP) and Delhi—where the police is under the control of the BJP-ruled central government—almost simultaneously stormed the campuses of Aligarh Muslim University (AMU) and Jamia Millia Islamia, the country’s two premier Muslim universities that have been the vanguard of the national movement against the CAA/NRIC. After attacking students with batons, tear gas shells, and live bullets, resulting in scores injured at both universities, the police detained hundreds of protesters. And then, all over UP, the Muslim community became the target of a brutal campaign

<sup>69</sup> ‘How Five People in Assam Were Killed During Anti-Citizenship Amendment Protests’, *The Wire*, December 16, 2019, <https://thewire.in/rights/assam-anti-citizenship-amendment-act-protest-deaths>.

<sup>70</sup> ‘Police Burst Tear Gas Shells Inside Mangaluru Hospital, Alleges Congress’, *The Hindu*, December 20, 2019, <https://www.thehindu.com/news/cities/Mangalore/police-burst-tear-gas-shells-inside-mangaluru-hospital-alleges-congress/article30357522.ece>.

to ‘silence’ opponents of the CAA.<sup>71</sup> Protesters faced a heavy-handed police response with excessive use of force that resulted in numerous deaths and injuries. The closing of civic space in Uttar Pradesh was a textbook case.

### ***Restrictions on Information, Expression, and Assembly***

Just after CAA 2019 was passed on 12 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 communication lockdown. Restrictions on assembly and movement were imposed, through orders passed under Section 144 of CrPC. Internet services were suspended in various districts. Protests at AMU, and later in Lucknow, were met with disproportionate brutal force. Public warnings, house arrests, and preventive detentions were then carried out against persons the authorities accused of coordinating the protests.

On and after 20 December 2019, the first Friday after the CAA 2019 became law, and when nation-wide peaceful protests were planned, police reprisals against protesters in UP was swift and led to violent consequences. The UP Police ordered checking and frisking around mosques, resorted to baton charge without provocation, and used tear gas shells and stun grenades indiscriminately. According to eyewitness and survivor testimonies, police personnel shot live bullets at protesters. Police firing resulted in at least 22 deaths and several grievous injuries across several districts. A recently released police investigation has given a ‘clean chit’ to the policemen.<sup>72</sup>

### ***Reprisals and Subversion of Justice***

Following the protests in several UP towns, policemen, allegedly accompanied by right-wing activists belonging to the RSS and

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<sup>71</sup> Citizens Against Hate, *Everyone Has Been Silenced: Police Excesses Against Anti-CAA Protestors in Uttar Pradesh, and the Post-Violence Reprisal*. (New Delhi: Alternotes Press), <http://citizensagainsthate.org/wp-content/uploads/2020/03/Citizens-Against-Hate-Everyone-Has-Been-Silenced.pdf>.

<sup>72</sup> ‘SIT Clean Chit to Six Cops Accused of Shooting Student During Anti-CAA Stir’, *Indian Express*, July 1, 2020, <https://indianexpress.com/article/india/sit-clean-chit-to-six-cops-accused-of-shooting-student-during-anti-cao-stir-6484414/>.

its affiliates, ransacked homes and destroyed private property in Muslim neighbourhoods in a number of cities to target what they called were violent protesters.<sup>73</sup> In Muzaffarnagar, they also attacked an Islamic seminary, ransacked the property, beat up its staff members and students, and arrested 55 persons. At least 14 were minors, all under the age of 18. Across the state, the police also arbitrarily detained several individuals, including children, and allegedly tortured them. Several prominent HRDs were arrested and booked under various charges.<sup>74</sup>

In post-violence crackdown, purportedly to exact ‘revenge’,<sup>75</sup> as the UP Chief Minister (CM) Yogi Adityanath had publicly promised, the UP Police detained individuals arbitrarily, followed by invoking serious charges against them. This included, in several instances, children, in complete violation of provisions of the Juvenile Justice Act 2015. There has been widespread complaint of custodial torture and inhumane treatment, including beatings as well as food, water, and sleep deprivation. Authorities also sealed shops and properties of those accused of involvement in protests and issued notices for the recovery of damages from others accused of having destroyed public property. Authorities are trying to intimidate citizens in an effort to prevent further protests against CAA 2019, and to cover up police’s crimes, most recently in Lucknow.<sup>76</sup>

### ***Delhi: Criminalising Peaceful Dissent***

In Delhi, with its large civil society and student bodies, anti-CAA protests continued well after the crackdown in Uttar Pradesh, despite authorities’ efforts to quell them. Elections to the Delhi

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<sup>73</sup> Tushar Dhara, ‘In Muzaffarnagar, Police and Hindutva Groups Attack Muslims in Attempt to Recreate 2013 Riots’, *The Caravan*, December 28, 2019, <https://caravanmagazine.in/politics/muzaffarnagar-police-hindutva-groups-attack-muslims-attempt-recreate-2013-riots>.

<sup>74</sup> Citizens Against Hate, *Everyone Has Been Silenced*.

<sup>75</sup> ‘CM Adityanath Says UP Govt Will Take “Revenge” on Those Involved in Violence During Protests’, *The Print*, December 19, 2019, <https://theprint.in/india/cm-adityanath-says-up-govt-will-take-revenge-on-those-involved-in-violence-during-protests/337943/>.

<sup>76</sup> ‘Anti-CAA Protests: Two Shops Sealed as UP Govt Starts to Recover Damages’, *Indian Express*, July 1, 2020, <https://indianexpress.com/article/india/anti-caa-protests-two-shops-sealed-as-up-govt-starts-to-recover-damages-6484094>.

state assembly in February 2020, provided BJP an opportunity to target anti-CAA protests by trying to delegitimise the protests, through communal polarisation. Throughout the campaign period, from mid-January 2020 onwards, BJP leaders, including senior ministers and parliamentarians, resorted to crude ‘dog whistles’, seeking votes for the party by reviling Muslims and those protesting against CAA 2019, calling them ‘anti-nationals’, ‘traitors’, and ‘terrorists’.<sup>77</sup> Though the party lost the state elections badly, the Islamophobic tenor of the campaign created a fertile ground for subsequent targeting of Muslims. Media and social networks were used extensively.

The spark that triggered the violence in the North East district of Delhi soon after in February 2020 was lit in the form of a public threat by a BJP leader Kapil Mishra to Delhi Police to physically vacate an anti-CAA protest site in the district, or face consequences. Mishra’s workers, with support of the police, attacked anti-CAA protesters at several sites, triggering the violence beginning on 23 February 2020.<sup>78</sup> Several media reports have revealed the active complicity of Delhi Police in targeting of Muslims.<sup>79</sup> The three-day frenzy, marked by widespread rioting, arson, looting and property destruction, resulted in at least 53 deaths, including that of 34 Muslims, and several places of worship destroyed. Anti-CAA protests continued till late March 2020, when security forces used the opportunity provided by the Covid-19 pandemic to dismantle the protest sites.

### ***Crackdown Against Activists and CSOs***

In almost all the above instances, the use of excessive force has been followed by fabricated prosecutions under various sections of the law, including anti-terror and sedition laws. This was most

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<sup>77</sup> Purnima Tripathi, ‘BJP’s Delhi Election Campaign: Hate and Perish’, *Frontline*, February 28, 2020, <https://frontline.thehindu.com/cover-story/article30802606.ece>.

<sup>78</sup> Mira Kamdar, ‘What Happened in Delhi Was a Pogrom’, *The Atlantic*, February 28, 2020, <https://www.theatlantic.com/ideas/archive/2020/02/what-happened-delhi-was-pogrom/607198/>.

<sup>79</sup> ‘How Delhi’s Police Turned Against Muslims’, *The New York Times*, March 12, 2020, <https://www.nytimes.com/2020/03/12/world/asia/india-police-muslims.html>.

obviously evident in Delhi violence, with hundreds of working-class Muslims and several youth activists—including women and students, even doctors and community kitchen operators involved in providing humanitarian assistance—being arrested, charged in fabricated cases, including for terror-related offences. At the time of finishing this report, at least nine activists are in custody, all have been denied (See Annex B at the end of the chapter).

Authorities are able to do to this by abusing the criminal justice system and forgoing due process. Connecting all Delhi arrests is the First Information Report # 59/2020 of the Delhi Police's Crime Branch, registered a good two weeks after the violence. The account in the FIR seeks to attribute the violence to a pre-planned conspiracy by Muslim youth and their organisations spearheading the anti-CAA protests, including the Jamia Coordination Committee (JCC), Pinjra Tod, and Popular Front of India (PFI).<sup>80</sup> There is a clear intent to criminalise the peaceful anti-CAA protests while whitewashing the well-documented role of BJP legislators and Hindu extremist groups in the violence. Armed with the fabricated FIR and a complicit judiciary, authorities have been arresting and detaining activists under harsh penal provisions such as the UAPA and 'sedition' provisions of the IPC. By systematically targeting Muslim youth and using harsh penal provisions that allow indefinite detention without conviction, authorities are seeking to silence the democratic voice that had emerged among Muslims and civil society in India to challenge the democratic backsliding that the CAA-NRIC nexus represented.

The targeted detainees are mostly students from prestigious universities that have, amid the anti-CAA 2019 protests since late December 2019, grown as pro-democracy youth icons, speaking out against discrimination and targeting of beleaguered minorities. All were exercising their democratic right to peaceful assembly and expression, when they led protests and made speeches against CAA 2019 and other discriminatory laws and programmes that seek to deny Muslims rights at par with the rest of citizens. In their speeches they called for Gandhian resistance of non-cooperation

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<sup>80</sup> The first is an anti-CAA protest coordination group; the second a women's rights group; and the third a Muslim rights group.

to prevent authorities implementing CAA 2019 and the planned NRIC. They invoked constitutional provisions of equality, non-discrimination, and secularism.

Similar targeting is taking place in Uttar Pradesh. Student X, a student leader and anti-CAA protest organiser at Aligarh Muslim University, who faces more than 70 charges in four different criminal cases for his involvement in anti-CAA protests, noted:

For a long time, the varsity [AMU] has been targeted by the members of the ruling party. Several elected BJP members of parliament hailed our university as 'nursery of terrorism'. This 'nursery of terrorism' pretext was used to launch several attacks by Hindu right-wing groups over the years.<sup>81</sup>

Following the anti-CAA protests, authorities have targeted office-bearers of the AMU Students' Union, invoking sedition and murder charges for anti-CAA protests at the university. Student X was arrested shortly after being interviewed for this report and remains in custody as this report is being finalised.<sup>82</sup> Other groups that have borne police brutality in UP for their anti-CAA protests include Rihai Manch and Popular Front of India,<sup>83</sup> with leaders of the group and other HRDs arrested, and several tortured in custody.

Senior BJP leaders visibly complicit in instigating violence in UP in December 2019 and Delhi in February 2020,<sup>84</sup> on the other hand,

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<sup>81</sup> <name withheld>, email interview, New Delhi, June 17, 2020.

<sup>82</sup> Fatima Khan, 'AMU Student Arrested Over CAA Violence, Charged with Sedition and Attempt to Murder', *The Print*, May 29, 2020, <https://theprint.in/india/amu-student-arrested-over-caa-violence-charged-with-sedition-and-attempt-to-murder/432006/>.

<sup>83</sup> Mahtab Alam, 'CAA Protests: UP Police Detain, Threaten, Beat Up Activists, Journalist in Lucknow', *The Print*, December 21, 2019, <https://thewire.in/government/up-police-arrests-cao-protests>; and 'Popular Front of India's UP Head, 16 Other Workers Arrested for Violence During Anti-CAA Protests: Police', *India Today*, December 23, 2019, <https://www.indiatoday.in/india/story/pfi-s-up-head-16-other-workers-arrested-for-violence-during-anti-cao-protests-police-1631006-2019-12-23>.

<sup>84</sup> Tushar Dhara, 'In Muzaffarnagar, Police and Hindutva Groups Attack Muslims in Attempt to Recreate 2013 Riots', *The Caravan*, December 28, 2019, <https://caravanmagazine.in/politics/muzaffarnagar-police-hindutva-groups-attack-muslims-attempt-recreate-2013-riots>; and Akshita Jain, 'Kapil Mishra's Ultimatum Went Viral, But Police Says No Evidence Yet of Politicians Instigating

have suffered no retribution. The police refused to even register an FIR against some of the named ones. Further, a police investigation in Delhi has failed to take note of several instances of hate speech by senior BJP leaders that preceded the violence. Authorities have continued to act in violation of rule of law, also because higher courts have refused to rein them in, when approached by victims and affected citizens. This *carte blanche* has also allowed the police to re-script the account of the anti-Muslim violence in Delhi, in their official recording of it, and resist attempts at transparency in criminal proceedings. Described by independent experts as a pogrom against Muslims, the North East Delhi violence of February 2020 is now being portrayed as a conspiracy by anti-CAA activists and Muslim groups. This criminalisation of the peaceful protests in Delhi and elsewhere that led the mass movement against the discriminatory CAA has had the upshot of effectively silencing dissent.

#### **Chilling Effect on Civil Society Actors—the Closing of Civic Space**

The blatant and unabashed targeting of dissidents has had a chilling effect on Indian civil society, especially minority-focused actors. In many ways, this has fundamentally transformed the way in which Indian civil society functions. A journalist and human rights activist who has been recording authoritarian tendencies for almost 50 years, says that what is different now from India's previous brushes with authoritarianism is the rampancy of impunity:

People are terrified. There is now fear of the state. There is fear of police, fear of CCTVs, fear of Aadhaar, fear of the tower that captures your movement through the movements of your phone. You are to an extent self-immobilised.<sup>85</sup>

A human rights researcher at a Delhi-based research and advocacy centre, concurs:

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Delhi Riots', *HuffPost*, July 14, 2020, [https://www.huffingtonpost.in/entry/kapil-mishra-delhi-police-no-evidence-riots\\_in\\_5f0d5509c5b6df6cc0b0aa45](https://www.huffingtonpost.in/entry/kapil-mishra-delhi-police-no-evidence-riots_in_5f0d5509c5b6df6cc0b0aa45).

<sup>85</sup> A journalist and human rights activist, personal interview, New Delhi, June 28, 2020.

The threat of criminalisation and the threat of torture has come very close now. It has forced us to think and spend time in securing our behaviour and ourselves. Not just mental resources that are being utilised in terms of anxiety, but also on technology to secure our work. It is quite draining.<sup>86</sup>

Another human rights researcher noted that there have also been more subtle changes in the dynamics of civic action:

The organising capacity required to carry out even simple things like small fact-finding missions for human rights violations—the simplest things have become not impossible, but more difficult to work with.<sup>87</sup>

#### **Courts Failing to Protect ‘Basic Freedoms’**

Observers have noted that the extensive architecture of justice institutions in India—the High Courts and the Supreme Court of India and the National Human Rights Commission (NHRC)—have largely failed to protect both the right to peaceful protest or adequately shield peaceful protestors from excessive force and brutality by the police, in the course of protests across India against the CAA.<sup>88</sup> With a few notable exceptions, neither the courts intervened on their own to restrain the use of excessive force, ensure protests could continue unimpeded, nor held the police personnel accountable. When pushed to intervene, the response was not in keeping with upholding of fundamental rights and holding the state authorities to account. This lethargy by justice institutions has acted as a shield of impunity for authorities and police, encouraging them to brazenly target students, HRDs, and scores of people engaged in peaceful community-led protests.

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<sup>86</sup> A human rights researcher, personal interview, New Delhi, June 29, 2020.

<sup>87</sup> A human rights researcher, personal interview, New Delhi, June 29, 2020.

<sup>88</sup> 71% of the respondents in the SAC’s key informant survey disagreed with the assertion that since 2014, Indian courts have issued progressive judgements relating to the freedom of peaceful assembly (See Annex A at the end of the chapter).

## **Erased Civic Space in Kashmir**

### **Abrogating Laws and Social Contracts**

The case of Muslim-majority Kashmir—where regressive constitutional changes in August 2019 were accompanied by a communication blackout, mass detentions, and a movement lockdown—demonstrates how civic space can be sought to be completely erased, within a formal democratic framework. UN experts, raising the issue of the shutdown with the government of India, urged it to ‘end the crackdown on freedom of expression, access to information and peaceful protests’ that they characterised 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>89</sup>

Civic space in conflict-affected Kashmir has always been restricted. Authorities have relied on extraordinary laws, including the Public Safety Act (PSA) and the UAPA, to detain activists and protesters, imposed Section 144 of CrPC indiscriminately, and frequently resorted to internet shutdowns, recording at least 180 instances of internet blockades since 2012.<sup>90</sup> They have also used ‘less-lethal’ as well as lethal weapons, including pellet guns and live bullets, against protesters among whom were children as well. Extra-judicial executions and enforced disappearances of civilians have been common. All these measures have been aimed at crushing dissent. And authorities have resorted to Armed Forces Special Powers Act (AFSPA), and other regulations, to give themselves protection against any accountability. The most recent round of attacks on ‘basic freedoms’ were, however, quite unlike anything before in their being all-encompassing and systematic.

On 5 August 2019, the central government abruptly and unilaterally revoked Article 370 of the constitution, stripping Jammu

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<sup>89</sup> ‘UN Rights Experts Urge India to End Communications Shutdown in Kashmir’, Office of the United Nations High Commissioner for Human Rights, August 22, 2019, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24909&LangID=E>.

<sup>90</sup> ‘Internet Shutdown Tracker’, Software Freedom Law Center, accessed July 16, 2020, <https://internetshutdowns.in>.

and Kashmir of its nominal autonomy and removed Article 35A, taking away guarantees for the state's indigenous population.<sup>91</sup> This has been a long-standing RSS-BJP agenda, for forcible integration of the restive state, over which India has fought several wars and the UN's role has been invoked. Recently, several moves by the authorities point to attempts to change the demography of the Muslim-majority state.<sup>92</sup> To give effect to the changes and prevent dissent, the authorities took a slew of measures that effectively erased civic space in the state. The revocation of the constitutional provisions, preceded by the mobilisation of thousands of Indian security forces into the region, was accompanied by suspension of all modes of communication, including landline and mobile phones, a press clampdown, largescale arrests and detentions, and lockdown of all movement. These measures led Freedom House in its 2020 report to rate Kashmir as 'Not Free' giving it a score of 28 out of 100 (compared to 49 in 2019 when it was marked 'partly free').<sup>93</sup>

### Abrogating 'Basic Freedoms'

#### ***Communication Blackout; Speech and Expression Restricted***

The changed administrative status was accompanied by an almost total communications blackout, including shutdown of telephone and internet services, as well as cable and television channels. Late in 2019, landline phone service and some mobile service were restored. Broadband and mobile data services were blocked for over four months.<sup>94</sup> It was only in January 2020 that restricted access to internet was allowed, with some 1674 'whitelisted' websites

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<sup>91</sup> The former guaranteed a degree of autonomy for the state, the latter provided rights for indigenous residents of the state.

<sup>92</sup> 'J&K Regional Parties Say Modi's Govt Amendment to New Domicile Law is "Cosmetic", a "Bluff"', *The Print*, April 4, 2020, <https://theprint.in/india/jk-regional-parties-say-modi-govts-amendment-to-new-domicile-law-is-cosmetic-a-bluff/395462/>.

<sup>93</sup> 'Freedom in the World 2020: Indian Kashmir', Freedom House, accessed July 16, 2020, <https://freedomhouse.org/country/indian-kashmir/freedom-world/2020>.

<sup>94</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>.

being made available to users. All social media sites including Facebook and WhatsApp were banned for common people.<sup>95</sup> This was ostensibly to curb their misuse by ‘miscreants for propagating false information and rumours’. Any criminal charges under the misuse were under the draconian UAPA. Penal action continues to be taken for misusing social media, with two minors charged in March 2020, one under UAPA.<sup>96</sup> Internet restrictions have been eased now, but access to high-speed mobile internet remains restricted to this day, with most areas only having 2G connectivity. Kashmir has earned the notoriety of experiencing the world’s longest internet shutdown in a democracy.<sup>97</sup>

Restrictive measures also included frequent use of long curfews and movement restrictions, making it difficult for newspapers to operate. But press freedom has been restricted more directly as well. Journalists speak of extensive control by authorities of the material that is published, including scrutiny of content, occasional interrogations, as well as through leveraging of advertising revenue. There seems a concerted campaign by the authorities to prevent publication of any news that might be construed as being in opposition to the official line. Several journalists have been booked over the past months, all under UAPA provisions: for posting ‘incriminating material’, for publishing ‘fake news’, and for ‘glorifying terrorism’.<sup>98</sup> Freedom of press has come under serious threat, with the government announcing a ‘media policy’

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<sup>95</sup> ‘Govt Slaps UAPA on Those “Misusing” Social Media in Kashmir, Owaisi Says New Records of Cruelty’, *India Today*, February 18, 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>96</sup> Safwat Zargar, ‘In Kashmir, A Spree of Arrests for Alleged “Misuse” of Social Media and Masking Apps’, *Scroll*, March 1, 2020, <https://scroll.in/article/954711/in-kashmir-a-spree-of-arrests-for-alleged-misuse-of-social-media-and-vpns>.

<sup>97</sup> ‘India’s Internet Shutdown in Kashmir is Now the Longest Ever in a Democracy’, *Washington Post*, December 16, 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).

<sup>98</sup> Shakir Mir, ‘Use of UAPA Against Journalists is Last Nail in Coffin for Press Freedom in Kashmir’, *The Wire*, April 26, 2020, <https://thewire.in/media/use-of-uapa-against-journalists-is-last-nail-in-coffin-for-press-freedom-in-kashmir>.

in June 2020 that seeks to regulate media reporting, empowering authorities to decide what is ‘anti-social’ and ‘anti-national’ news, and prescribing action against outlets deemed to be publishing ‘objectionable’ news. Once de-empanelled, outlets face restrictions on receiving government advertisement as well as potential criminal proceedings.<sup>99</sup>

### ***Shutting Down Association and Assembly***

Abrogation of Article 370 was followed by ‘preventive’ detention of thousands of persons, particularly politicians, community leaders, business associations, civil society members, and the youth. 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 populations, and raise voice. This included three former elected Chief Ministers (CMs), members of ‘mainstream’ and ‘separatist’ political parties, bar association leaders, and heads of traders’ associations among others.<sup>100</sup> Civil society groups claim the number of those detained since August 2019 is close to 8,000.<sup>101</sup> Increasingly many arrested persons have been booked under PSA that allows for ‘preventive detention’ (merely on the suspicion of committing a crime), without charge or trial for up to two years.

A large number of youth, many of them minors (under 18), have also been detained periodically in police stations, without formal charge to prevent their participation in protests. According to the National Federation of Indian Women 13,000 children were

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<sup>99</sup> ‘Jammu and Kashmir’s New Media Policy is Aimed at Demolishing the Local Press, Editors Say’, *Scroll*, June 24, 2020, <https://scroll.in/article/964900/jammu-and-kashmiris-new-media-policy-is-aimed-at-demolishing-the-local-press-editors-say>.

<sup>100</sup> ‘India: Free Kashmiris Arbitrarily Detained’, *Human Rights Watch*, September 16, 2019, <https://www.hrw.org/news/2019/09/16/india-free-kashmiris-arbitrarily-detained>.

<sup>101</sup> Government claims approximately 5161 preventive arrests have been made in the Kashmir Valley since 4th August 2019 and that 609 persons remain under detention. See ‘609 People Currently Under Detention in J&K: Home Ministry’, *India Today*, November 20, 2019, <https://www.indiatoday.in/india/story/609-people-currently-under-detention-in-j-k-home-ministry-1620884-2019-11-20>.

detained in Kashmir in the early months of the lockdown.<sup>102</sup> Other reports confirm these accounts.<sup>103</sup> While many of those arrested in August 2019 have now been released, a large number continue to remain in detention, lodged in prisons including outside Kashmir,<sup>104</sup> mostly in Delhi and Agra, far from home. The detention of Mehbooba Mufti, an ex-state CM and other senior politicians have also been recently extended.<sup>105</sup>

Mass detention has resulted in the near-total suspension of all political activity in Kashmir. A senior politician and former state minister, recently released from preventive detention under the PSA after nine months, claimed he was repeatedly asked to quit political activity in exchange for freedom from detention.<sup>106</sup> The months following the abrogation have also seen a ban on gatherings, both political and religious, the latter including Eid (August 2019), Muharram (September 2019), and Miladun Nabi (November 2019). In addition, apart from the usual restrictions on congregations and processions, authorities have also imposed late-night curfews. These amount to denial of rights of persons to practise their religion.

### ***Excessive Force against Protesters (Non-Lethal and Lethal)***

Despite attempts to prevent dissent, when protests have been successfully conducted, authorities have cracked down, tear-gassing, pepper-spraying, beating and chasing away protesters.

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<sup>102</sup> 'Young Boys Tortured in Kashmir Clampdown as New Figures Show 13,000 Teenagers Arrested', *The Telegraph*, September 25, 2019, <https://www.telegraph.co.uk/news/2019/09/25/young-boys-tortured-kashmir-clampdown-new-figures-show-13000/>.

<sup>103</sup> 'Kashmir Caged', *NewsClick*, August 14, 2019, <https://www.newsclick.in/kashmir-caged>.

<sup>104</sup> 'Coronavirus: Kashmiris Fear for Safety of Kin in "Cramped" Jails', *Al Jazeera*, April 14, 2020, <https://www.aljazeera.com/news/2020/04/coronavirus-kashmiris-fear-safety-kin-cramped-jails-200413103319099.html>.

<sup>105</sup> 'Detention of Mehbooba Mufti, Two J&K Leaders Extended by Three Months', *The Hindu*, May 5, 2020, <https://www.thehindu.com/news/national/former-jk-chief-minister-mehbooba-muftis-detention-under-psa-extended-by-three-months/article31512206.ece>.

<sup>106</sup> 'Was Asked to Quit Politics for Freedom: Nayeem Akhtar', *Kashmir Observer*, June 27, 2020, <https://kashmirobsserver.net/2020/06/27/asked-to-sign-horribly-worded-bond-ex-minister-spills-detention-beans/>.

Pellet shotguns have been reported to be used, as security forces' weapon of choice to contain the protests in the time since the clampdown in Kashmir.<sup>107</sup> Pellet guns are considered 'non-lethal', but in reality cause serious injuries notably to the eyes, in a very large number of cases causing permanent blindness. These, besides other physical injuries, have been the cause of the mass injuries reported by protesters in Kashmir, especially since 2016.<sup>108</sup> Soon after the lockdown, Governor Satyapal Malik admitted at a press meet that there were some pellet injuries caused in police action against protesters, the first admission of the use of pellet guns in Kashmir.<sup>109</sup> Meanwhile, live bullets continue to take lives of protesting youth.<sup>110</sup>

### **Absence of Judicial Relief**

Notably, actions to deny 'basic freedoms'—in effect, erasing of civic space—have been upheld by the judiciary, underlining the zone of exception that operates in Kashmir. Despite mass arbitrary detentions, both the High Court (HC) and the Supreme Court (SC) have been unenthusiastic about taking up habeas corpus applications filed by those seeking these freedoms. According to the Jammu and Kashmir Bar Association—the apex body of the state's lawyers—of the over 600 habeas corpus petition filed before the HC, less than 1 per cent have been decided to date, resulting in protracted incarcerations.<sup>111</sup> Courts, including the SC, have also not provided any relief on the matter of internet

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<sup>107</sup> 'Kashmir: Government Using Pellet Guns to Suppress Protests', *HuffPost*, August 9, 2019, [https://www.huffingtonpost.in/entry/article-370-kashmir-protests-pellet-guns\\_in\\_5d4d6a11e4b09e7297450516](https://www.huffingtonpost.in/entry/article-370-kashmir-protests-pellet-guns_in_5d4d6a11e4b09e7297450516); 'Over 150 Treated for Tear Gas, Pellet Gun Injuries in Kashmir', *Al Jazeera*, August 23, 2019, <https://www.aljazeera.com/news/2019/08/150-treated-tear-gas-pellet-gun-injuries-kashmir-190823052847698.html>.

<sup>108</sup> In largescale protests across Kashmir following the killing of militant commander, Burhan Wani.

<sup>109</sup> '36 Suffered Pellet Injuries since August 5: Official', *The Hindu*, August 28, 2019, <https://www.thehindu.com/news/national/36-suffered-pellet-injuries-since-august-5-official/article29280622.ece>.

<sup>110</sup> 'Pulwama Gunfight: Civilian Shot Dead in Protests', *The Kashmir Walla*, May 7, 2020, <https://thekashmirwalla.com/2020/05/pulwama-gunfight-civilian-shot-dead-in-protests/>.

<sup>111</sup> '99% Habeas Corpus Filed in J&K HC Since August 2019 Pending', *NewsClick*, June 27, 2020, <https://www.newsclick.in/99%25-Habeas-Corpus-Filed-Jammu-Kashmir-HC-August-2019-Pending>.

shutdowns. The SC responding to a Public Interest Litigation (PIL), with the hearing held after five months, deemed that access to internet was not an absolute right and could be restricted by the state, including ‘complete prohibition of speech in certain circumstances’.<sup>112</sup> Similarly, the SC hearing a PIL 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. This was despite the widespread evidence to the contrary, including a report filed by the police that itself reported minors in detention.<sup>113</sup> Earlier attempts by concerned citizens before the higher courts to ban the use by security forces of pellet guns against unarmed protesters have suffered similar fate in their quest for justice for victims and accountability of duty-bearers.<sup>114</sup> Failure of the highest courts to act as check against executive overreach in Kashmir, and to defend rights of citizens, means that the people of Kashmir continue to be deprived of their ‘basic freedoms’ of speech and expression, association and assembly, besides their access to services and opportunities, without any hope of redress and justice.

## **Conclusion**

Civic space is under threat the world over. India’s case is unique in that the ‘unravelling’, as Freedom House recently called the ‘alarming setbacks’, has taken place at an extraordinary pace, over the span of a few years.<sup>115</sup> That this is happening in ‘the world’s largest democracy’ is especially poignant. Traditionally, political scientists have tended to see the rise in authoritarianism as

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112 ‘Verdict on Internet Curbs in J&K in Defence of Free Speech, But Relief Remains Elusive’, *Frontline*, January 11, 2020, <https://frontline.thehindu.com/dispatches/article30542427.ece>.

113 Mahtab Alam, ‘J&K Police Denied Media Reports of Illegal Arrests of Minors. Its Own List is Proof to Contrary’, *The Wire*, November 6, 2019, <https://thewire.in/rights/kashmir-minors-2>.

114 ‘J&K High Court Refuses to Ban Use of Pellet Guns by Security Forces’, *Deccan Herald*, March 11, 2020, <https://www.deccanherald.com/national/north-and-central/jk-high-court-refuses-to-ban-use-of-pellet-guns-by-security-forces-812797.html>.

115 ‘Freedom in the World 2020: India’, Freedom House, accessed July 16, 2020, <https://freedomhouse.org/country/india/freedom-world/2020>.

reflective of multiple trends: undermining the democratic rules of the game, denial of legitimacy to political opponents, curtailing civil liberties, and deriding of toleration and encouragement to violence.<sup>116</sup> These are exactly the sorts of democratic backsliding we notice taking place since Narendra Modi took power at the head of the BJP six years ago, hinting at a definite authoritarian drift. That the ‘alarming setbacks’ almost entirely concern India’s largest religious minority points to BJP’s preferred route to consolidating power by targeting minorities and dissenters, besides undermining the opposition and weakening key institutions. In this political project, PM Modi has embraced hardline Hindutva, a choice that has given him much electoral dividends. It is unlikely he will eschew this collaboration soon. This bodes ill for civic space in India and the health of its democracy, and for its minorities.

## **Recommendations**

### *For the government of India*

- i. Abide by guarantees of expression, assembly and association, contained on Article 19 (1) (a), 19 (1) (b) and 19 (1) (c) respectively of Indian Constitution.
- ii. Abide by India’s commitment to relevant international human rights treaties and standards, including Universal Declaration for Human Rights, in particular Articles 19 (right to freedom of opinion and expression) and 20 (right to freedom of peaceful assembly and association) and ICCPR Article 19 (right to opinion and expression) and Article 21 (right to peaceful assembly, without restriction), specifically:
  - iii. Freedom of Association
    - Stop arbitrarily cancelling registration of CSOs and restore those cancelled
    - Stop suspending bank accounts of CSOs and freezing funds of CSOs that criticise government and on political grounds

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<sup>116</sup> Steven Levitsky and Daniel Ziblatt, *How Democracies Die: What History Tells Us About Our Future* (New York: Viking, 2018), 23-24.

- Amend FCRA to remove provisions that target CSOs arbitrarily and disproportionately.
- iv. Protection of HRDs
  - Stop harassing and targeting HRDs and activists and misusing the criminal justice system to punish HRDs
  - Release all HRDs in detention without conditions
  - Provide HRDs a safe environment to work in aid of democracy and for human rights
  - Conduct impartial and thorough enquiry into each case of targeting of HRDs and bring perpetrators to account
- v. Freedom of assembly
  - Stop practice of arbitrary Section 144 orders/denial of permissions to hold protests
  - Ban use of excessive force against peaceful protesters
  - Ban use of ‘less’ lethal weapons against protesters
  - Follow United Nations and Government of India’s guidelines and Ministry of Home Affairs Standard Operating Procedures on use of force against assemblies
- vi. Freedom of speech and expression
  - Review IPC Sections 124A (sedition) and IT Act to bring them in line with best practices in freedom of expression
  - Take steps to protect journalists and ensure they work without fear
  - Stop censoring media (traditional and social), and stop Internet shutdowns

*For the international community*

- i. Encourage India to abide by its own constitutional guarantees and its commitments to ICCPR on ‘basic freedoms’ of association, peaceful assembly, and expression.
- ii. Encourage India to stop harassing and targeting CSOs, HRDs, journalists, and human rights workers and activists
- iii. Encourage India to objectively investigate harassment and targeting of HRDs, activists and journalists and prosecute officials responsible.

## Annex A

### Assessment of Civic Space in India: Survey Findings

In order to gauge perceptions about the scope for civic action in India since the Narendra Modi-led Bharatiya Janata Party (BJP) government came to power in 2014, a key informant survey was conducted among 41 active civil society actors. The respondents included journalists, academics and researchers, retired bureaucrats, human rights lawyers and activists, and political commentators. Seventy-six per cent of the respondents work or have worked on human- and minority-rights-related issues, 56 per cent identified as female, and 66 per cent as belonging to a minority group (religious, ethnic, or caste).

The respondents were asked a range of questions about recent trends (since 2014) concerning the three basic freedoms: association, expression, and peaceful assembly. Their responses were marked on a 5-point Likert scale. Overall, the survey results painted a troubling picture, with overwhelming agreement among the respondents that civic space in India was closing under Prime Minister Modi's watch, particularly for the country's minorities.

#### Freedom of Association

The survey result reflects a broad consensus among key informants that the BJP government has sought to interfere with the general functioning of civil society organisations (CSOs). The government has particularly resorted to deregistering or limiting registrations of CSOs, and the choking of foreign funds (See Figures 1 and 2).

CSOs have been allowed to receive foreign funding without restriction

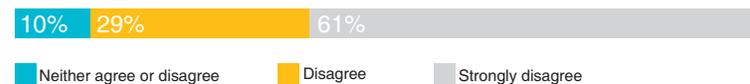


Figure 1: Perceptions of Freedom of Association—CSO Functioning

The government has not used its authority to deregister, create issues with deregistering or interfere with the functioning of CSOs



Figure 2: Perceptions of Freedom of Association—Access to Foreign Funding

### Freedom of Expression

There was unanimous agreement that freedom of expression has deteriorated under the present government. There was also unanimous agreement that individuals in India are presently not free to express their personal views on sensitive topics (See Figure 3). While India has a large number of media outlets, 93 per cent of the respondents agreed that the country’s major print and broadcast media outlets do not represent a wide range of political perspectives. Ninety-seven per cent of the respondents, including all the journalists surveyed, agreed that there is evidence of self-censorship while reporting on politically sensitive issues.

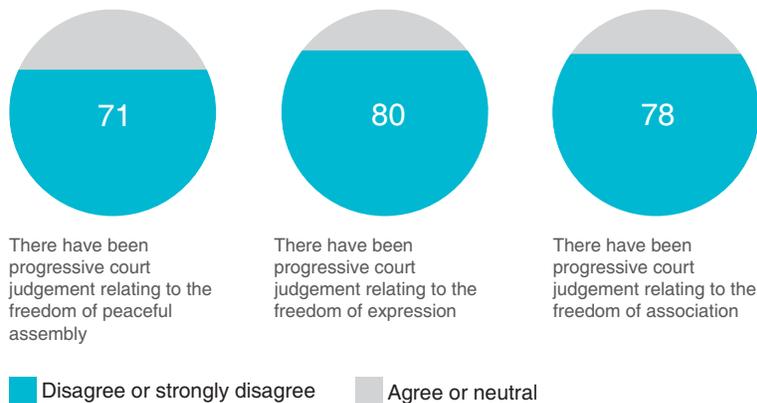


Figure 3: Perceptions of Freedom of Expression

### Freedom of Peaceful Assembly

With stories of Indian security forces resorting to excessive force against protesters having emerged recently, all the respondents agreed that the state has not allowed peaceful protests and

demonstrations. All also noted that security forces have resorted to making illegal and arbitrary arrests.

### Judicial Defence of the Three Basic Freedoms

Respondents generally agreed that the three basic freedoms are promised to Indian citizens by law but were largely disappointed with the Indian judiciary's inability to defend recent encroachments on the freedoms. There seems to be particular concern about the erosion of freedom of expression, with only 10 per cent of the respondents agreeing that Indian courts have passed progressive judgements upholding these. Indian courts' efforts to uphold the right to peaceful assembly were slightly more favourably evaluated, perhaps reflecting recent judgements by some lower-level courts upholding the rights of peaceful anti-CAA protesters.

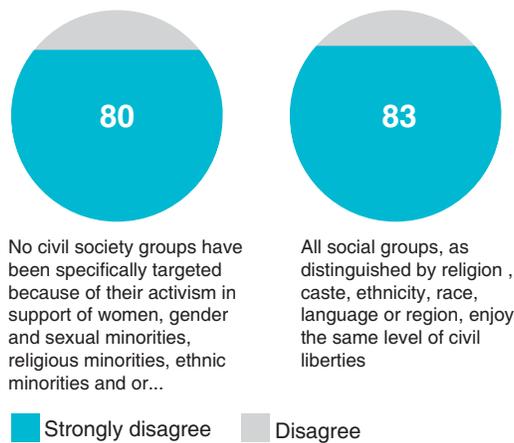


Figure 4: Perceptions of Judicial Defence of the Three Basic Freedoms

### Minorities and Minority Rights Defenders Under BJP Rule

There is Freedom of Religion in practice

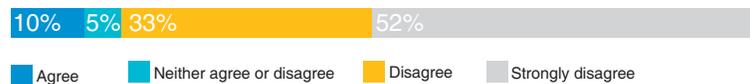


Figure 5: Perceptions of the State of Civil Rights Among Minorities and Minority Rights Groups

The government has allowed religious organisations/groups to function unhindered

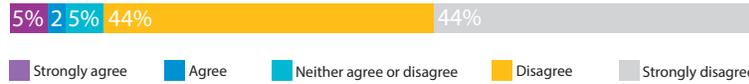


Figure 6: Perceptions of the State of Freedom of Religion



One hundred percent of respondents answered either strongly disagree or disagree to the following statements:

1. The state has granted media houses, CSOs, academics, human rights defenders or activists full freedom of expression, and
2. Individuals are free to express their personal views on political or other sensitive topics without fear of surveillance or retribution.

Figure 7: Perceptions of Government Interference in the Functioning of Religious Organisations

The respondents unanimously agreed that CSOs and human rights defenders (HRDs) working on minority-related issues have faced specific targeting, with all of them also noting a discernible increase in the number of attacks. The respondents also unanimously noted that India's minorities have not enjoyed the same level of civil liberties under the present government. Only 10 per cent of the respondents agreed that there is freedom of religion in practice.

## Annex B

### A select list of Indian HRDs still under incarceration or till recently under incarceration (in alphabetical order of names)

SN	Name	Details
1	Akhil Gogoi	<ul style="list-style-type: none"> <li>• Peasant leader and activist in Assam. Anti-CAA protester.</li> <li>• Arrested in December 2019 along with Bitu Sonowal, Dhajjya Konwar, and Manas Konwar.</li> <li>• First person to be charged under the amended Unlawful Activities (Prevention) Act (UAPA).</li> <li>• Still in custody.</li> </ul>
2	Anand Teltumbde	<ul style="list-style-type: none"> <li>• 69-year-old Dalit scholar, writer and activist. Part of the Bhima Koregaon 11.*</li> <li>• Arrested in April 2020 under the UAPA. Still in custody.</li> </ul>
3	Arun Ferreira	<ul style="list-style-type: none"> <li>• Human rights lawyer. Part of the Bhima Koregaon 11.*</li> <li>• Arrested in August 2018. Charged under the UAPA. Still in custody.</li> </ul>
4	Asif Iqbal Tanha	<ul style="list-style-type: none"> <li>• 24-year-old Jamia Milia Islamia student. Target of the Delhi Crackdown.**</li> <li>• Arrested in May 2020 and charged under the UAPA. Still in custody.</li> </ul>
5	Devangana Kalita	<ul style="list-style-type: none"> <li>• Scholar at JNU and women's rights activist. Target of the Delhi Crackdown.**</li> <li>• Arrested in May 2020. Granted bail but re-arrested and charged under the UAPA. Still in custody.</li> </ul>
6	Gautam Navlakha	<ul style="list-style-type: none"> <li>• 67-year-old activist and journalist. Part of the Bhima Koregaon 11.*</li> <li>• Arrested in August 2018. Charged under the UAPA. Arrest quashed by the Delhi High Court on 1 October 2018. Arrested again in April 2020. Still in custody.</li> </ul>

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SN	Name	Details
7	Gulfisha Fatima	<ul style="list-style-type: none"> <li>• Women's rights activist. Target of the Delhi Crackdown.**</li> <li>• Arrested in April 2020 and charged under the UAPA. Still in custody.</li> </ul>
8	Ishrat Jahan	<ul style="list-style-type: none"> <li>• Former Congress municipal councillor. Target of the Delhi Crackdown.**</li> <li>• Arrested in April 2020 and charged under the UAPA. Temporarily released on bail for her wedding. Back in custody.</li> </ul>
9	Kafeel Khan	<ul style="list-style-type: none"> <li>• Doctor who was acquitted after being falsely accused of medical negligence in August 2017. Anti-CAA protester.</li> <li>• Accused of stoking violence at Aligarh Muslim University in December 2019. Granted bail but arrested again and charged under the NSA in February 2020. Released in September 2020 after his detention was declared illegal by the Allahabad High Court.</li> </ul>
10	Khalid Saifi	<ul style="list-style-type: none"> <li>• Activist and co-founder of United Against Hate. Target of the Delhi Crackdown.**</li> <li>• Arrested in June 2020 and charged under the UAPA. Still in custody.</li> </ul>
11	Mahesh Raut	<ul style="list-style-type: none"> <li>• Tribal rights activist. Part of the Bhima Koregaon 11.*</li> <li>• Arrested in June 2018. Charged under the UAPA. Still in custody.</li> </ul>
12	Meeran Haider	<ul style="list-style-type: none"> <li>• Scholar at Jamia Milia Islamia. Target of the Delhi Crackdown.**</li> <li>• Arrested in April 2020 and charged under the UAPA. Still in custody.</li> </ul>
13	Natasha Narwal	<ul style="list-style-type: none"> <li>• Scholar at JNU and women's rights activist. Target of the Delhi Crackdown.**</li> <li>• Arrested in May 2020. Granted bail but re-arrested and charged under the UAPA. Still in custody.</li> </ul>
14	Rona Wilson	<ul style="list-style-type: none"> <li>• Prisoners' rights activist. Part of the Bhima Koregaon 11.*</li> <li>• Arrested in June 2018. Charged under the UAPA. Still in custody.</li> </ul>

SN	Name	Details
15	S.R. Darapuri	<ul style="list-style-type: none"> <li>• 77-year-old retired Dalit police officer and Ambedkarite activist. Anti-CAA protester.</li> <li>• Arrested in December 2019. Charged with rioting among others. Released on bail in January 2020 after almost three weeks.</li> </ul>
16	Sadaf Jafar	<ul style="list-style-type: none"> <li>• Social activist and actress.</li> <li>• Arrested in December 2019. Charged with rioting among others. Released on bail in January 2020 after almost three weeks.</li> </ul>
17	Safoora Zargar	<ul style="list-style-type: none"> <li>• Scholar at Jamia Milia Islamia. Anti-CAA protester.</li> <li>• Target of the Delhi Crackdown.** Arrested in April 2020 and charged under the UAPA, when she was three months' pregnant. Released on bail in June 2020 after over two months in custody.</li> </ul>
18	Sharjeel Imam	<ul style="list-style-type: none"> <li>• Scholar at JNU. Target of the Delhi Crackdown.**</li> <li>• Arrested in January 2020 and charged under sedition, UAPA, and others. Still in custody.</li> </ul>
19	Shifa-Ur-Rehman	<ul style="list-style-type: none"> <li>• President of the Jamia Millia Alumni Association. Target of the Delhi Crackdown.**</li> <li>• Arrested in April 2020 and charged under the UAPA. Still in custody.</li> </ul>
20	Shoma Sen	<ul style="list-style-type: none"> <li>• Professor and Dalit and women's rights activist. Part of the Bhima Koregaon 11.*</li> <li>• Arrested in June 2018. Charged under the UAPA. Still in custody.</li> </ul>
21	Sudha Bhardwaj	<ul style="list-style-type: none"> <li>• Lawyer and tribal rights activist. Part of the Bhima Koregaon 11.*</li> <li>• Arrested in August 2018. Charged under the UAPA. Still in custody.</li> </ul>
22	Sudhir Dhawale	<ul style="list-style-type: none"> <li>• Journalist and Dalit rights activist. Part of the Bhima Koregaon 11.*</li> <li>• Arrested in June 2018. Charged under the UAPA. Still in custody.</li> </ul>

SN	Name	Details
23	Surendra Gadling	<ul style="list-style-type: none"> <li>• Lawyer and Dalit rights activist. Part of the Bhima Koregaon 11.*</li> <li>• Arrested in June 2018. Charged under the UAPA. Still in custody.</li> </ul>
24	Thirumurugan Gandhi	<ul style="list-style-type: none"> <li>• Tamil rights activist.</li> <li>• Arrested in August 2018 after addressing the UNHRC about the shooting of Tamil protesters in Thoothukudi in May 2018. Charged with sedition and under the UAPA. Released in October 2018. Also booked for organising an anti-CAA protest in February 2020.</li> </ul>
25	Varavara Rao	<ul style="list-style-type: none"> <li>• 81-year-old activist and poet. Part of the Bhima Koregaon 11.*</li> <li>• Arrested in August 2018. Charged under the UAPA. Still in custody.</li> </ul>
26	Vernon Gonsalvez	<ul style="list-style-type: none"> <li>• Part of the Bhima Koregaon 11.*</li> <li>• Arrested in August 2018. Charged under the UAPA. Denied bail on medical grounds despite suffering from multiple ailments. Still in custody.</li> </ul>
27	Detentions in Kashmir after the abrogation of Article 370 on 5th August 2019.	<ul style="list-style-type: none"> <li>• The Government of India claimed in parliament on November 20, 2019, that a total of 5,161 persons were detained in Kashmir after the abrogation, out of which 609 remained under detention on that day.</li> <li>• Kashmiri lawyers and CSO have contended that these numbers are almost certainly an undercount. An untold number—too many to list here - continue in detention to this day.</li> <li>• Those who remained under prolonged detention included three former chief ministers of the erstwhile Jammu &amp; Kashmir state, including a current member of parliament. One ex-Chief Minister remains in detention to this day, as the report goes to print.</li> </ul>

\* Bhima Koregaon 11: a group of intellectuals and activists accused of stoking violence at Bhima Koregaon on 1 January 2018, and for hatching a plot to assassinate PM Modi. Since this report was drafted, four more arrests have been reported.

\*\* Delhi Crackdown: an on-going campaign against anti-CAA protesters in Delhi, seeking to portray them as responsible for the violence in February 2020.

## **Annex C**

### **A select list of NGOs that have faced targeting in India since 2014**

<b>SN</b>	<b>Name</b>	<b>Details</b>
1	Amnesty International	<ul style="list-style-type: none"><li>• Human rights advocacy organisation.</li><li>• Accused by the CBI of circumventing FCRA provisions and receiving foreign funding via its affiliated entities in India.</li><li>• Bengaluru office raided and bank accounts frozen in October 2018.</li><li>• Offices in Delhi and Bengaluru raided again in November 2019.</li><li>• Announced the termination of operations in India in September 2020, citing government harassment.</li></ul>
2	Centre for Promotion of Social Concerns (People's Watch)	<ul style="list-style-type: none"><li>• Human rights advocacy organisation.</li><li>• Accused of using foreign funding to share information with UN special rapporteurs and embassies.</li><li>• FCRA license renewal refused in October 2016.</li></ul>
3	Compassion International	<ul style="list-style-type: none"><li>• US-based Christian charity organisation.</li><li>• Accused of funding non-FCRA-registered Indian NGOs and of promoting religious conversions via its affiliates Caruna Bal Vikas Trust and Compassion East India.</li><li>• Subject to numerous raids in 2015 and barred from funding Indian NGOs without prior permission in 2016.</li><li>• Closed down all Indian operations in May 2017.</li></ul>
4	Greenpeace India	<ul style="list-style-type: none"><li>• Environmental organisation that has campaigned around climate change and land rights and organised protests against power and mining projects.</li><li>• Called a 'threat to national security' by the Intelligence Bureau in 2014.</li><li>• In January 2015, Priya Pillai, a Greenpeace activist, was prevented from travelling to London where she was scheduled to testify about coal-mining in India before a parliamentary group.</li></ul>

SN	Name	Details
		<ul style="list-style-type: none"> <li>• FCRA license cancelled in September 2015 for allegedly mixing foreign and domestic funds.</li> <li>• Offices raided and bank accounts frozen in October 2018.</li> </ul>
5	Jamia Alumni Association	<ul style="list-style-type: none"> <li>• Alumni organisation of Jamia Millia Islamia, a premier Muslim university in Delhi that had been the centre of anti-CAA protests.</li> <li>• Several members including President Shifa-Ur-Rehman accused of inciting riots, arrested and charged under the UAPA.</li> </ul>
6	Lawyers Collective	<ul style="list-style-type: none"> <li>• Lawyer group led by Indira Jaisingh. Has represented several HRDs and advocated for human rights, women's rights, and LGBTIQ+ rights.</li> <li>• FCRA license cancelled in November 2019.</li> <li>• Homes and offices in Delhi and Mumbai raided in July 2019.</li> </ul>
7	Pinjra Tod (Break the Cage)	<ul style="list-style-type: none"> <li>• All-women collective of university students that began as a movement against regressive rules at university hostels.</li> <li>• Two founding members who had organised anti-CAA protests in Delhi were accused of inciting riots, arrested and charged under the UAPA.</li> </ul>
8	Rihai Manch	<ul style="list-style-type: none"> <li>• Human rights advocacy organisation in Uttar Pradesh that has documented and provided legal aid for state-led rights violations against vulnerable communities, including Muslims, Dalits, and other vulnerable groups.</li> <li>• Several senior Rihai Manch activists, including its president Mohammad Shoaib and member, retired police officer SR Darapuri who organised anti-CAA protests, were arrested and charged with inciting riots.</li> </ul>

<b>SN</b>	<b>Name</b>	<b>Details</b>
9	Sabrang Trust & Citizens for Justice & Peace (CJP)	<ul style="list-style-type: none"><li>• NGOs run by social activist Teesta Setalvad, who campaigns for the victims of the anti-Muslim riots in Gujarat in 2002.</li><li>• FCRA licenses cancelled in 2016.</li><li>• Also faces numerous probes by CBI and Gujarat Police</li></ul>
10	United Against Hate	<ul style="list-style-type: none"><li>• Delhi-based platform that began as a campaign in 2017 against the surge in religious hate crimes since 2014.</li><li>• Operates a helpline for victims of hate crimes.</li><li>• Raised the ire of several BJP leaders, including Home Minister Amit Shah, who blamed them in the parliament for provoking violence in the name of protests.</li><li>• Co-founders Khalid Saifi and Umar Khalid have been charged under the UAPA and accused of inciting riots.</li></ul>

# Civic Space in Nepal

Ritika Singh, Shambhawi Paudel,  
Sudeshna Thapa & Jeevan Baniya

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In its latest report, *People Power under Attack*, CIVICUS, the South Africa-based organisation that has been keeping track of how civic space has fared globally over the years, points out that the governments in South Asia have become increasingly repressive towards civil society. Though Nepal is considered comparatively more tolerant in the region, the report notes that civic space there is ‘obstructed’ as well.<sup>1</sup> In the context of such a conclusion, what follows is an attempt to ascertain the status of civic space in Nepal alongside a short reference on how religious minorities have fared.

This chapter reviews the emergence of civic space and the nature of civic space. It maps out how civil society has emerged and developed in contemporary history, and in the course of its evolution, to what extent civic space has been nurtured and opened up further or restricted thereof. It focuses specifically on:

- tracing how civic space became a legitimate sphere of activity in Nepal, while evaluating the level of its openness at present;
- conducting a review of the legal regime that governs the functioning of civic space in Nepal; and
- identifying the space enabled by the government to keep

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<sup>1</sup> Civic space is obstructed when it is undermined by the state whether by means of surveillance, bureaucratic harassment or defamation. In an obstructed civic space, citizens are vulnerable to frequent use of excessive force by law enforcement agencies, and journalists face the risk of physical attack and criminal defamation charges, which could encourage self-censorship. See: CIVICUS, *People Power under Attack* (2019), <https://civicus.contentfiles.net/media/assets/file/GlobalReport2019.pdf>.

alive the civic spirit while also specifically reviewing the civic space available for religious minorities.

The chapter is based primarily on a review of published material and includes an assessment of laws and policies, including various bills that were under consideration in recent years, to capture the general position of the government vis-à-vis civic society over time. Primary data was also collected through an expert survey conducted online, the results of which have been provided in the Annex following this chapter.

### **The Context**

Nepal emerged from the control of the Rana family oligarchy in 1951, after a century that had left the country isolated, poor, and underdeveloped. The budding democracy established following the ouster of the Ranas, however, was to last less than a decade before King Mahendra banned all political activities and introduced the Panchayat system, a political arrangement that functioned under the direct control of the palace. The Panchayat system lasted from 1960 to 1990, when a popular movement, popularly called the People's Movement, reinstated pluralistic multi-party democracy in the country. It was not smooth sailing for the democracy though with Nepal witnessing 12 governments in the 12 years until 2002, with abuse of authority almost the norm.<sup>2</sup> Meanwhile, in 1996, a Maoist insurgency took off, which brought into stark relief the class- and identity-based inequalities and injustices in the country.<sup>3</sup>

In the year 2002, accusing the democratic government of not being able to resolve the conflict and maintain law and order, King Gyanendra took power and began to rule through nominated prime ministers before assuming direct power himself in February 2005. That set the stage for what has been called the Second People's Movement in 2006, during which an alliance

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<sup>2</sup> M. Lawoti, *Looking Back, Looking Forward: Centralisation, Multiple Conflicts, and Democratic State Building in Nepal* (Washington D.C.: East West Centre: 2007).

<sup>3</sup> D. Thapa and B. Sijapati, *A Kingdom under Siege: Nepal's Maoist Insurgency, 1996 to 2004* (Kathmandu: Zed Books, 2005).

of the parliamentary parties along with the Maoists forced the king to reinstate democracy. This movement would bring about massive changes in the country—declaration of Nepal as a republic, and the election of an inclusive Constituent Assembly to draft a popular constitution for the country.<sup>4</sup> However, political problems continued to persist with the constitution failing to be promulgated until almost a decade later, and the re-emergence of older political actors in the so-called ‘new Nepal’.<sup>5</sup> Thus, while civil society contributed to the overthrowing of the king in 2006, it lost its influence soon after the ouster of the king and the return to power of the political parties, and instead experienced fragmentation and party-politicisation.<sup>6</sup>

As will be elaborated in later sections, the post-2006 period ‘undermined the civil society solidarity that existed before 2006’ by contentious political issues revolving around federalism and secularism, the introduction of several laws (or attempts thereof) aimed at constricting civic space as a result, and the government’s attempts to direct funding toward infrastructural development as opposed to advocacy actions.<sup>7</sup> The state’s attitude has appeared to be that there has been ‘enough discussion of people’s rights, and that it is now time to think about people’s duties to the nation and its development’.<sup>8</sup> The conflation of all civil society organisations

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4 M. Lawoti, *Looking Back, Looking Forward: Centralisation, Multiple Conflicts, and Democratic State Building in Nepal* (Washington D.C.: East West Centre: 2007).

5 B. Sharma and B. Ellen, ‘Earthquake Prods Nepal Parties to Make Constitution Deal’, *The New York Times*, June 8, 2015, <https://www.nytimes.com/2015/06/09/world/asia/earthquake-prods-nepal-parties-to-make-constitution-deal.html>.

6 Ibid.

7 S. Nazneen and D. Thapa, ‘The Implications of Closing Civic Space for Sustainable Development in Nepal’ (IDS and ACT Alliance, 2019), <https://www.ids.ac.uk/publications/the-implications-of-closing-civic-space-for-sustainable-development-in-nepal>; and International Centre for Not for Profit Law (ICNL), *Assessment of the Legal Environment for Civil Society and Media in Nepal* (Kathmandu: ICNL, 2017), <https://www.icnl.org/post/assessment-and-monitoring/assessment-of-the-legal-environment-for-civil-society-and-media-in-nepal>.

8 F. Talcott, A. Khanal, and P. Bhattarai, ‘Civil Society in a Federal Nepal: A Landscape Study’ (Kathmandu: British Council, 2019), [https://www.britishcouncil.org.np/sites/default/files/nepal\\_cs0\\_landscape\\_study\\_final\\_report.pdf](https://www.britishcouncil.org.np/sites/default/files/nepal_cs0_landscape_study_final_report.pdf).

### Box 1: NGOS and CSOs

Due to their broadening mandate, international and transnational structures, and intersectionality in approaches, a singular understanding of civil society organisations and non-governmental organisations has become difficult to come by.

The United Nations Reporting Framework defines CSOs as ‘non-State, not-for-profit, voluntary entities formed by people in the social sphere that are separate from the State and the market’.\* Following one widely accepted definition of NGOs as ‘self-governing, private, not-for-profit organisations that are geared to improving the quality of life of disadvantaged people’,<sup>†</sup> NGOs can be considered a sub-set of CSOs.<sup>‡</sup> Such an inclusion can also be unspecified but present as when CSOs are taken to consist of all ‘non-market and nonstate organisations outside of the family in which people organise themselves to pursue shared interests in the public domain’, including community-based organisations and village associations, environmental groups, women’s rights groups, farmers’ associations, faith-based organisations, labour unions, co-operatives, professional associations, chambers of commerce, independent research institutes, and the not-for-profit media.<sup>‡</sup>

Such an expansive definition of CSOs, however, has come under criticism for the uncritical assumption that all associations that are not politically- or profit-oriented promote the same goals. NGOs, especially those that are focused on donor-driven ideas of development and good governance, have the potential to promote a ‘de-politicised version of social action and weakening the strength of civil society in pursuing radical ideas of social change’, while also negating the conception that civil society can be a ‘site for contestation, struggle and conflict’.<sup>§</sup>

\* ‘Civil Society Organisations’, Reporting Framework, UN Guiding Principles, accessed September 23, 2020, <https://www.ungpreporting.org/glossary/civil-society-organizations-csos>.

<sup>†</sup> A.C. Vakil, ‘Confronting the Classification Problem: Toward a Taxonomy of NGOs’, *World Development* 25, no. 12 (1997): 2057-2070.

<sup>‡</sup> United Nations Development Program: *Working with Civil Society in Foreign Aid: Possibilities for South-South Cooperation?* (Beijing: UNDP China, September 2013), [https://www.undp.org/content/dam/undp/documents/partners/civil\\_society/publications/2013\\_UNDP-CH-Working-With-Civil-Society-in-Foreign-Aid\\_EN.pdf](https://www.undp.org/content/dam/undp/documents/partners/civil_society/publications/2013_UNDP-CH-Working-With-Civil-Society-in-Foreign-Aid_EN.pdf).

<sup>§</sup> R. Mohanty, ‘Civil Society and NGOs’, *The Indian Journal of Political Science* 63, no. 2 (June-September 2002): 213-232.

(CSOs) and non-governmental organisations (NGOs) means that all such bodies are viewed as service-delivery entities.<sup>9</sup>

### **Civic Space in the Pre-2006 Period**

The era of democratic politics in Nepal after the overthrow of the Rana regime in Nepal in 1951 laid the ground for civil society to expand but not in terms of providing a check on the state; rather their role was limited to complementing the state.<sup>10</sup> The Panchayat era saw limits being placed on the political rights of individuals as well as institutions, and there were various attempts to ‘register, guide, direct, control, and supervise’ social organisations.<sup>11</sup>

The two pieces of legislation under which CSOs can seek registration both date back to the Panchayat years: the National Directive Act (NDA) 1961, and the Association Registration Act (ARA) 1977.<sup>12</sup> Organisations registered under the NDA are directly accountable to the government and are not required to report or renew registration with the District Administration Office.<sup>13</sup> The ARA gave the government the power to ‘give necessary directions to the Association’, and described it as ‘the duty of the Association to follow such directions’.<sup>14</sup> Hence, civil society organisations had little say to actually contest the state at the time.<sup>15</sup>

There was an opening of civic space for a brief period around 1979, in the lead up to the national referendum to decide the fate of the Panchayat system, when the state allowed political parties

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9 U. Uprety, ‘Defending Civil Society: Report on Laws and Regulations Governing Civil Society Organisations in Nepal’ (Washington D.C.: World Movement for Democracy, 2011); and C.H. Shrestha, ‘Activists and Development in Nepal’, in *Varieties of Activist Experience: Civil Society in South Asia*, edited by D.N. Gellner (New Delhi: Sage Publications, 2010), 181-216.

10 C.D. Bhatta, ‘The Interface between the State and Civil Society in Nepal’, *Dhaulagiri Journal of Sociology and Anthropology* 10 (2016): 63–91.

11 Ibid.

12 International Centre for Not for Profit Law (ICNL), *Assessment of the Legal Environment for Civil Society and Media in Nepal* (Kathmandu: ICNL, 2017), <https://www.icnl.org/post/assessment-and-monitoring/assessment-of-the-legal-environment-for-civil-society-and-media-in-nepal>.

13 Ibid.

14 L.R. Baral, *Oppositional Politics in Nepal* (Kathmandu: Himal Books, 2005).

15 K. Sharma, ‘The Political Economy of Civil War in Nepal’, *World Development* 34:7 (2006): 1237-1253.

and organisations to be openly active.<sup>16</sup> Even though the freedom was short-lived as the referendum went in favour of the status quo, many organisations formed at the time remained active.<sup>17</sup> After the referendum, laws were also relaxed or amended to facilitate freedom of expression which resulted in the growth of some CSOs, particularly of professionals from diverse streams.<sup>18</sup>

Until the late 1980s, foreign aid was the major source of development financing. According to the country's first Five-Year Plan (1956-60), the entire development budget was to be funded through external sources, and until the early 1980s, foreign aid contributed to roughly three quarters of the development expenditure.<sup>19</sup> But funds coming into the non-government sector was monitored by the Social Service National Coordination Council, which was under the Queen, thereby giving the government a great say on how the money was spent, with little regard for accountability or transparency.<sup>20</sup>

The democratic transition in 1990 meant that a space opened up for participation of civic society in policy-making, and in advocating for change.<sup>21</sup> In 1991, Nepal also acceded to the International Covenant on Civil and Political Rights (ICCPR), accepting all international obligations under the treaty, including freedom of

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16 M. Hoftun, W. Raeper, and J. Whelpton, *People, Politics and Ideology: Democracy and Social Change in Nepal* (Kathmandu: Mandala Book Point, 1999).

17 Ibid.

18 See: V. Adams, *Doctors for Democracy: Health Professionals in the Nepal Revolution* (New York: Cambridge University Press, 1998); K. Hachhethu, 'Mass Movement 1990', *Contributions to Nepalese Studies* 17, no. 2 (1990), 177-201; Hoftun et al, *People, Politics and Ideology*; J. Whelpton. *A History of Nepal* (New York: Cambridge University Press, 2005).

19 Ministry of Finance, Government of Nepal, *A Study on Foreign Aid Mobilisation in Federal Nepal* (Kathmandu: Government of Nepal, 2017).

20 S. Shakya, 'Unleashing Nepal's Economic Potential: A Business Perspective', in *Nepal in Transition: From People's War to Fragile Peace*, edited by S. von Einsiedel, S. Pradhan and D. Malone (Cambridge: Cambridge University Press, 2012), 114-128.

21 While not under the scope of this chapter, it is important to point out that most literature on civil society produced after 1990 is largely embedded in line with liberal civil society ideals that approach civil society as development actors and which advocate for curtailment of the state. They uncritically herald but do not support or substantiate with any concrete evidence the important democratising activities of civil society and the media in reference to the post-1990 period.

### **Box 2: CSOs and NGOs in National Development**

It was only in the Seventh Five-Year Plan (1985-90) that NGOs were mentioned in national development policy, with the Social Services National Coordination Committee (SSNCC) designated as the government body overseeing the NGO sector. This Plan, the last to be adopted during Panchayat rule, was also when many registered and unregistered CSOs that challenged the legitimacy of the Panchayat state came into existence.

The Eighth Plan (1992-97), which followed the restoration of democracy two years earlier, adopted a liberal approach towards setting up and operating CSOs and simplification of government policies to allow these organisations to play an active role in rural development projects across the country. This Plan can be also seen as the foundation for the Social Welfare Act 1992 since it stipulated that '[t]he government sector will make provisions for policy guidelines and legal support to facilitate the social service programmes run by the non-government and private organisations'. From the Ninth Plan (1997-2002) onwards, a separate section or chapter on NGOs was included with an objective to develop the non-governmental sector as a partner in development. The trend of government plans setting aside a separate section on NGOs continued in later iterations as well, with incremental focus on their roles in local development and on marginalised groups. The Tenth Plan (2002-2007) especially added targeted programmes for socially and geographically marginalised groups.

The Eleventh Plan (2007-10) signalled a major shift, as it was adopted following the end of the decade-long armed conflict in the country. It remains the only plan with a separate section on human rights along with an increased role for non-governmental sector in issues of post-conflict state recovery and reconstruction, rule of law, restorative justice, as well as development projects. It, however, also began the trend for increased state regulation, with a stronger role mentioned for the Social Welfare Council (SWC) in reviewing NGOs as well in recordkeeping of all their functions.

The priority of the government returned to organisations focusing on development from the Twelfth (2010-13) through the Fifteenth (2019-22) Plans, their 'watchdog' component was minimised while the sphere of control of the SWC was expanded, mainly through

restrictions on international funding. The Fourteenth Plan (2016-19) also emphasised the need for legal reforms regarding the operation and monitoring of NGOs. The Fifteenth Plan (2019-22) takes a step back with CSOs given a supporting role in development plans and policies, and in the upliftment of marginalised groups. And, despite the separate chapter dealing with civic matters and human rights, CSOs are not mentioned as having a role on these issues or on accountability or good governance.

Sources: National Planning Commission, Government of Nepal, The Seventh Plan (1985-90) (1985); The Eighth Plan (1992-97) (1992); The Ninth Plan (1997-2002) (1997); The Tenth Plan (2002-2007) (2002); The Eleventh Plan (2007-10) (2007); The Twelfth Plan (2010-13) (2010); The Thirteenth Plan (2013-16) (2013); The Fourteenth Plan (2016-19) (2016); The Fifteenth Plan (2019-22) (2019).

expression, assembly, and association.<sup>22</sup> The signing of the ICCPR, which followed the political changes, also facilitated the entry of international non-government organisations (INGOs) into the country.

Thus, the restoration of multiparty democracy in the country coincided with the flourishing of CSOs in Nepal. There are mainly two reasons for this rapid increase in associational life in the country. First was the influx of INGOs. During Panchayat times, funds from foreign donors were directed to a 'consolidated fund managed by the government', but after 1990, Nepali CSOs and NGOs were directly able to access funds, which resulted in an increase in their numbers.<sup>23</sup> The second factor was the focus of bilateral and multilateral donor agencies in working with non-state actors for 'good governance and democratisation' in the country.<sup>24</sup> This was a marked departure from the previous focus on

<sup>22</sup> Articles 18, 21 and 22. UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171.

<sup>23</sup> Nazneen and Thapa, 'The Implications of Closing Civic Space for Sustainable Development in Nepal'.

<sup>24</sup> D.R. Panday, *Nepal's Failed Development: Reflections on the Mission and the Maladies* (Kathmandu: Mandala Book Point, 1999); A. Rademacher and D. Tamang, *Democracy, Development and NGOs* (Kathmandu: SEARCH, 1993); World Bank, *World Development Report 2000: Entering the 21st Century* (Oxford: Oxford University Press, 2000).

‘development’, with funds now channelled into ‘the construction of a civil society’.<sup>25</sup> That INGOs were required to work through local partners were a contributory factor as well.

One important feature in the 1990s was the unprecedented increase in the number of organisations formed on the basis of caste and ethnic identity.<sup>26</sup> While the historically marginalised groups such as Madhesis, Janajatis and Dalits along with women had organised quite effectively for decades through cultural institutions,<sup>27</sup> the democratic opening allowed these groups to mobilise politically for the first time.<sup>28</sup> There were, however, legal obstacles curtailing the full enjoyment of the open civic space. For instance, under the Social Welfare Act 1992, foreign and domestic CSOs that sought international or government resources were required to obtain affiliation with the Social Welfare Council.<sup>29</sup> The Social Welfare Act was widely regarded as restrictive as it permitted arbitrary denials of registration and did not compel the Social Welfare Council (SWC), the body responsible for operationalising the Act, to respond to applications in a timely manner. Furthermore, the SWC had an office only in the capital, Kathmandu, making it difficult for CSOs in other parts of the country in getting affiliation.<sup>30</sup>

The Maoist insurgency saw civic space emerge as an independent bipartisan entity able to hold both the state and the Maoists to account. This resulted in the rise of civic society actors as defenders

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25 S. Tamang, ‘Civilising Civil Society: Donors and Democratic Space’, *Studies in Nepali History and Society*, 7:2 (2002), 309-353.

26 See S.I. Hangen, *The Rise of Ethnic Politics in Nepal: Democracy in the Margins* (New York: Routledge, 2010), for more details on the growth of identity-based movements in Nepal since the middle of the 20th century.

27 Madhesis are people with origins in the southern Tarai plains of Nepal while Janajatis are indigenous nationalities. Along with Dalits, these groups comprise nearly two thirds of the national population.

28 D. Thapa, *World Development Report 2011: Background Case Study—Nepal* (Washington DC: The World Bank, 2011), <https://drive.google.com/file/d/1UEHRwxTaz1ZwRSk72IEV5i2GjjeH4LaK/view>. However, there are authors who believe that with the emergence of a range of new CSOs in the 1990s, indigenous CSOs were pushed to the margins in most development discourse. See: U. Uprety, *(Shrinking) Civic Space in Nepal: Concerns among Indigenous People’s Organisations* (Kathmandu: Forum for Development Studies, 2020).

29 Social Welfare Council, ‘Social Welfare Rules 2049’ (Kathmandu: SWC, 1993).

30 ICNL, *Assessment of the Legal Environment for Civil Society and Media in Nepal*.

of democracy and human rights.<sup>31</sup> When the king seized power in February 2005, CSOs as well as the media experienced a major setback. Viewing civic space as a threat to his rule, he jailed many prominent civil society actors and announced controls on both civil society organisations and donors.<sup>32</sup> A prominent example was the placing of the chairperson of the NGO Federation of Nepal, the biggest grouping of NGOs in Nepal, on a travel ban and arrest list, together with political party leaders and eminent human rights activists.<sup>33</sup> The media was also subjected to strict censorship and control at the time, with news and political programmes barred from television and radio, and many journalists facing increased scrutiny, harassment, and even arbitrary detention.<sup>34</sup> The government also introduced a new code of conduct stipulating that NGO workers should not engage in ‘party politics’, their tenure as heads of organisations be limited to two terms, and they not receive salaries.<sup>35</sup>

Despite these constraints, or perhaps because of them, this period witnessed an increased level of trust in CSOs as protectors and promoters of human rights and justice. That was mainly because Nepal’s civil society evolved into a movement aimed at defending democracy and human rights, specifically for women, Janajatis, and other marginalised groups, during the 2006 People’s Movement.<sup>36</sup> However, once the monarchy had been ousted and

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31 Nazneen and Thapa, ‘The Implications of Closing Civic Space for Sustainable Development in Nepal’.

32 J. Baniya, ‘Civil Society, Social Movements and Democratisation: A Case Study of Nepal’ (PhD diss., University of Oslo, 2014), ISSN 1504-3991; O.A. Rai, ‘The crow and the scarecrow’, *Nepali Times*, May 18, 2018, <https://www.nepalitimes.com/banner/the-crow-and-the-scarecrow>.

33 Shrestha, ‘Activists and Development in Nepal’.

34 Reporters without Borders, ‘King takes further measures against press freedom’, *RSF*, February 8, 2005, <https://rsf.org/en/news/king-takes-further-measures-against-press-freedom>; Reporters without Borders, ‘More than 40 journalists released after three hours in custody’, *RSF*, February 2, 2005, <https://rsf.org/en/news/more-40-journalists-released-after-three-hours-custody>; Reporters without Borders, ‘Indignation as government restricts advertising to “nationalist” publications’, *RSF*, June 29, 2005, <https://rsf.org/en/news/indignation-government-restricts-advertising-nationalist-publications>;

35 Bhatta, ‘The Interface between the State and Civil Society in Nepal’.

36 U. Uprety, ‘Democracy and Civil Society: A Reflection on the Legal Framework for Civil Society in Nepal’, *International Journal of Not-for-Profit Law* 13, no. 3 (2011).

### Box 3: Non-NGO Civil Society Initiatives

In the political turmoil following 2002, when the king ousted the elected government, student unions, professional organisations, human rights groups, intellectuals, artists, and assorted activists rose in protest. These protests coalesced into the wider citizens' movement after the king took direct control of the state in early 2005. Civic mobilisation saw the emergence of the Citizens' Movement for Democracy and Peace (CMDP) as a loose but leading network of a cross-section of civil society actors. The CMDP was successful in a way citizen-led movements had not been in Nepal because of the ability of its leadership to mobilise the broader public, and by embracing the pro-republic and transformative agenda of the broader movement.

Issues of minority rights, social justice and a secular state have been raised since the 1990s by the Nepal Federation of Indigenous Nationalities (NEFIN), Dalit activists and some human rights activists, which continued until the promulgation of the Constitution in 2015.<sup>\*</sup> There has also been spontaneous civil society activism in recent times. Some examples include the mobilisation in mid-2019 against the controversial Guthi Bill meant to regulate land in the name of religious trusts<sup>†</sup> and against arbitrary fees in medical colleges.<sup>‡</sup> Even earlier, was the attempt to ban protests at Maitighar Mandala, a popular venue for protests in the capital. The response was swift from civil society with street protests and a court challenge before the government backed down.<sup>§</sup>

\* J. Baniya, 'Civil Society, Social Movements and Democratisation: A Case Study of Nepal' (PhD diss., University of Oslo, 2014), ISSN 1504-3991.

†Himalayan News Service, 'Government Withdraws Controversial Guthi Bill', *The Himalayan Times*, June 25, 2019, <https://thehimalayantimes.com/nepal/government-withdraws-controversial-guthi-bill/>.

‡ Republica, 'Medical Students Protest at Maitighar Demanding Return of Additional Fees', *myRepublica*, November 6, 2019, <https://myrepublica.nagariknetwork.com/news/medical-students-protest-at-maitighar-demanding-return-of-additional-fees>.

§ 'Nepal—ICNL', International Centre for Not for Profit Law (ICNL), last modified April 16, 2020, <https://www.icnl.org/resources/civic-freedom-monitor/nepal#glance>.

the political parties and the Maoists came to power, these same forces began to see CSOs as inimical to their interests; the Maoists held that civil society was responsible for attempting to weaken

the communist movement, while the mainstream political parties blamed the advocacy activities of NGOs for having fuelled the Maoist movement in the first place.<sup>37</sup>

### **Post-2006 Civic Space**

The rise of Maoists in Nepal was fuelled by the idea of inequities arising out of class but also equally importantly due to ethnic identity.<sup>38</sup> Hence, its end saw the rise of a number of identity-based groups and associations, and brought rights-based advocacy of those marginalised on the basis of gender, caste, ethnicity, religion, region and language.<sup>39</sup> The idea of inclusion was adopted by the government wholeheartedly as well, with the Three-Year Interim Plan (2007/08–2009/10), which went further than the Tenth Plan and declared: ‘Inclusion means to fulfil the physical, emotional and basic needs of all the people, groups or castes. It has to be achieved by respecting their dignity and their own culture and also reducing the disparities between excluded and advantaged groups and by reducing the gap in the existing opportunities and access. In addition to this, it is to help to build a just society by ensuring rightful sharing of power and resources for their active participation as a citizen.’<sup>40</sup>

Various donor groups and INGOs had become active in supporting the marginalised groups as a means to undercutting the grievance base of the Maoists during the conflict and later in keeping with the spirit of the government programme as outlined in the Eleventh Plan. This included raising a voice for a higher degree of inclusion in the new state dispensation being debated in the Constituent Assembly (CA). The state, however, began to increasingly view such initiatives with a degree of hostility. It was around this time that various provisions were introduced to curtail the space for civic activity in Nepal, a trend that has

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37 Talcott et al, ‘Civil Society in a Federal Nepal’.

38 M. Lawoti, *Towards a Democratic Nepal: Inclusive Political Institutions for a Multicultural Society* (New Delhi: Sage Publications, 2005).

39 Nazneen and Thapa, ‘The Implications of Closing Civic Space for Sustainable Development in Nepal’.

40 National Planning Commission, Government of Nepal, Three-Year Interim Plan (2007/08–2009/10).

become all the more pronounced over the years. With the exception of the aftermath of the devastating 2015 earthquake, when the government recognised the role of CSOs in providing relief to the general people, the state has demonstrated degrees of antagonism towards civic groups. Most noticeably, the SWC has issued several directives that hinder CSO operations such as limits on administrative expenditure of total budgets and increasingly burdensome registration procedures.<sup>41</sup>

Irrespective of the growing restrictions domestically, on the international front Nepal continued to stand for an open society. Nepal signed on to the Accra Agenda of Action 2008,<sup>42</sup> an international commitment between states, civil society organisations, the United Nations, and global funds to set an agenda on how to increase aid effectiveness.<sup>43</sup> The Accra Agenda specifically highlights the role of the state in creating an enabling environment for CSOs to contribute to development objectives.<sup>44</sup> It also calls for increased coordination of CSO activities with government efforts and transparency and accountability on both sides.<sup>45</sup> Similar sentiments are echoed in the Busan Partnership for Effective Development Cooperation 2011<sup>46</sup> and the 2015 Addis Ababa Action Agenda<sup>47</sup> that Nepal is party to. Nepal is also committed to the 2030 Sustainable Development Goals, which emphasises the role of civil society and non-government organisations in governance and development.<sup>48</sup>

<sup>41</sup> ICNL, *Assessment of the Legal Environment for Civil Society and Media in Nepal*.

<sup>42</sup> Third High Level Forum on Aid Effectiveness, *Accra Agenda for Action* (2008).

<sup>43</sup> OECD, *The Accra Agenda for Action (AAA)* (2008), <https://www.oecd.org/dac/effectiveness/45827311.pdf>.

<sup>44</sup> Third High Level Forum on Aid Effectiveness, *Accra Agenda for Action* (2008), Agenda 20.

<sup>45</sup> OECD, *The Accra Agenda for Action (AAA)* (2008), <https://www.oecd.org/dac/effectiveness/45827311.pdf>.

<sup>46</sup> Fourth High Level Forum on Aid Effectiveness, *Busan Partnership for Effective Development Cooperation* (2011).

<sup>47</sup> UN General Assembly, *Addis Ababa Action Agenda of the Third International Conference on Financing for Development (Addis Ababa Action Agenda)*, A/RES/69/313, 17 August 2015, [https://unctad.org/meetings/en/SessionalDocuments/ares69d313\\_en.pdf](https://unctad.org/meetings/en/SessionalDocuments/ares69d313_en.pdf).

<sup>48</sup> NGO Federation of Nepal, *Enabling Environment National Assessment*

### **Governing Civic Space in Nepal**

The Washington DC-based International Centre for Not-for-Profit Law (ICNL)<sup>49</sup> has identified the following elements common to a restrictive attitude of the state towards civic space: ‘the proposal and adoption of restrictive CSO laws; the proposal and adoption of anti-protest laws; the closure, de-registration and expulsion of CSOs; the adoption and manipulation of counterterrorism laws and policies; and, the adoption of laws and policies that restrict access to resources, notably including foreign funding and affiliations’.<sup>50</sup> With the exception of those dealing with counterterrorism, the Nepali government has either adopted all the other elements mentioned or at least tried to do so, representing an increasingly repressive attitude towards civil society. Foreign funding in particular is mostly tied to the fear of conversion to Christianity, which is discussed in detail later in the chapter.

All CSOs are required to register with the respective District Administrative Office under the Association Registration Act 1977, regardless of their functions. Hence, under this Act, ‘everything from football clubs to film societies to neighbourhood associations to research institutes to spiritual centres to self-help groups to advocacy organisations to service delivery NGOs’ have been registered.<sup>51</sup> All the organisations registered under the Association Registration Act are also given the option of affiliating with the SWC set up under the Social Welfare Act 1992 with the objective of ‘co-ordination, co-operation, mobilisation and promotion of the social organizations and institutions, in order to run social

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(EENA) (Kathmandu: NGO Federation of Nepal, 2015), [https://www.civicus.org/images/EENA\\_Nepal.pdf](https://www.civicus.org/images/EENA_Nepal.pdf).

<sup>49</sup> The ICNL is an organisation dedicated to supporting the growth of civil society by improving the legal frameworks regulating NGOs the world over. ‘International Centre for Not for Profit Law’, accessed September 22, 2020, <https://www.icnl.org>.

<sup>50</sup> ICNL (2016a) ‘Survey of Trends Affecting Civic Space: 2015-16’, Global Trends in NGO Law: A Quarterly Review of NGO Legal Trends around the World, 7.4, <https://www.icnl.org/resources/research/global-trends-ngo-law/survey-of-trends-affecting-civic-space-2015-16>.

<sup>51</sup> D. Thapa, ‘Revisiting the NGO Discourse’, *The Kathmandu Post*, October 4, 2018, <https://kathmandupost.com/opinion/2018/10/04/revisiting-the-ngo-discourse>.

**Box 4: Constitutional Limitations on Individual and Collective Freedom**

The Constitution of Nepal 2015 has guaranteed the freedom of expression and association, albeit with the caveat that the state can ‘impose reasonable restrictions’ on any action that undermines the ‘nationality, sovereignty, independence and indivisibility of Nepal’ or which disrupt the ‘the harmonious relations subsisting among the people of various castes, ethnicities, religions, or communities’,\* both conditions that provide a wide latitude in interpretation.

In fact, each of the seven constitutions Nepal has had so far have their own formulations, indicating the specific priorities and concerns of the state vis-à-vis the full enjoyment of civil rights and personal freedoms by citizens. It is also perhaps telling that Nepal is still not a party to the ILO Convention no. 87, Freedom of Association and Protection of the Right to Organise Convention, 1948,<sup>†</sup> which entails more specific obligations with regard to freedom of association and right to assembly than the ICCPR and human rights treaties Nepal is party to.<sup>‡</sup>

The first of Nepal’s constitutions, adopted in 1948, contained only two limitations on the fundamental freedoms of speech, assembly, association, religion, publication and religion: against the basis of principles of ethics and morality, or against prevailing laws and regulations.<sup>§</sup> The Interim Constitution of Nepal 1951, following the fall of the Rana regime, added a few more limitations: public benefit, maintenance of public harmony, national security, laws made by the state, and the norms set by those laws.<sup>||</sup> In both these documents, the rights were defined negatively—as something that people enjoyed outside the scope of these limitations.

The adoption of the Constitution of the Kingdom of Nepal in 1959 started the positive formulation of rights with the limitations mentioned under a separate clause entitled ‘Public Benefit’. A similar one was included in the Constitution of Nepal 1962 as well. A major difference in the two documents was that in 1959 ‘public benefit’ was defined as promoting certain national and public values inter alia morals, health, economic welfare, and respect of rule of law,<sup>#</sup> and in 1962, it was described negatively, disallowing people to exercise their rights in a way that goes

against the national interest,\*\* including forming political parties and organisations.\*\*

The Constitution of 1990 and the Interim Constitution of 2007 were both adopted after popular movements but the intent of both the constitutions on the limitations remained intact. From the 1990 constitution, the limiting clause actually began to be mentioned under the specific right it was qualifying. Hence, the limitations under personal freedom were different from limitations on press freedom which were again different from the limitation under freedom of association. But, in all instances, national unity and harmony between different caste and ethnic groups were highlighted.\*\* As with previous iterations, the Constitution of Nepal 2015 also lacks definitions and authoritative commentaries on what constitute 'public morality' or 'harmonious relations' between castes and ethnic groups,<sup>§</sup> creating a high risk of arbitrary suspension of civil and political freedoms.

\* Constitution of Nepal 2015, [https://www.constituteproject.org/constitution/Nepal\\_2015.pdf](https://www.constituteproject.org/constitution/Nepal_2015.pdf)

† ILO, 'Up-to-date Conventions and Protocols not ratified by Nepal', accessed 27 August 2020, [https://www.ilo.org/dyn/normlex/en/f?p=1000:11210:0::NO:11210:P11210\\_COUNTRY\\_ID:103197](https://www.ilo.org/dyn/normlex/en/f?p=1000:11210:0::NO:11210:P11210_COUNTRY_ID:103197)

‡ Article 9 of the Treaty Act of Nepal, 1990 requires treaty provisions to be enforceable as national laws and any inconsistent laws to be void for the purpose of that treaty.

§ The Nepal Government Act, 1948, Art 4.

|| The Nepal Interim Government Act, 1951, Art 19.

# Constitution of Kingdom of Nepal, 1959, Art 8.

\*\* Constitution of Nepal, 1962, Art 17.

†† Constitution of Nepal, 1962, Art 11.

‡‡ Constitution of Kingdom of Nepal, 1990, Art 12(2)(1); Interim Constitution of Nepal, 2007, Art 12(2)(3).

§§ Constitution of Nepal 2015, Art 17.

activities in more organized way'.<sup>52</sup> By making it mandatory for all INGOs to seek permission from the SWC to run their programmes and for all domestic CSOs/NGOs to likewise seek permission to receive funding from foreign sources, the SWC has become the primary regulatory body governing civil society in Nepal, in line

<sup>52</sup> Social Welfare Act 2049, <https://swc.org.np/sites/default/files/downloads/SWC-Act.pdf>.

with the changing state outlook towards regulatory policy for these organisations (see Box 2).

The Association Registration Act itself has stringent eligibility requirements for registration and does not even specify grounds under which a registration application may be rejected.<sup>53</sup> Furthermore, local authorities have the jurisdiction to suspend or terminate registration if an organisation fails to follow the directions of the government. Due to the arbitrary nature of the Association Registration Act, following the enactment of necessary legislation for non-profit companies to be registered, since 2006 CSOs have also taken that route instead. Both Nepali citizens and foreigners can establish a non-profit company,<sup>54</sup> and, unlike with the Association Registration Act, safeguards against arbitrary denial of registration also exist. However, there are restrictions such as the requirement of government approval to open new branches, which does not apply to profit-oriented corporations, and the requirement of government approval on operational expenditure.

The Social Welfare Act 1992 also brings in its own set of arbitrary rules and restrictions. Similar to the Association Registration Act, the Social Welfare Act does not stipulate any safeguards against arbitrary denials of registration to civil society organisations, such as a mandatory time period for the SWC to respond to an application, specific grounds for denial of registration, or avenues for appeal of a denial of registration. A particularly restrictive regulation is that the registered CSOs do not get blanket approval to receive foreign or government resources for their activities but must apply on a case-by-case basis. Furthermore, while INGOs can set up branch offices in the country following agreement with the SWC, they are required to take on local CSOs as implementing partners under project-specific agreements, a burdensome process that requires consent from up to seven different ministries.<sup>55</sup>

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<sup>53</sup> Association Registration Act, 2034, <http://www.lawcommission.gov.np/en/archives/category/documents/prevaling-law/statutes-acts/associations-registration-act-2034-1977>.

<sup>54</sup> Companies Act 2063, <http://www.lawcommission.gov.np/np/archives/category/documents/prevaling-law/statutes-acts/कम्पनी-ऐन-२०६३-statutes-acts>, Section 4(f-i).

<sup>55</sup> 'Nepal—ICNL', International Centre for Not for Profit Law (ICNL), last

In keeping with the growing illiberalism permeating the Nepali state, a Social Welfare and Development Act was drafted in 2014 with the intent to replace the Social Welfare Act of 1992. It contained a number of provisions that could constitute violations of freedom of association, including the increasingly burdensome registration procedures for CSOs, excessive regulatory powers being allocated to the SWC, and massive penalties to organisations functioning without registration, among others.<sup>56</sup> The said Act was not passed, owing to the widespread backlash from civil society organisations but had it become law in the form it was drafted, it would also have violated the ICCPR, which states the right to freedom of association.<sup>57</sup>

This has not prevented the SWC from not only controlling CSOs, but also the direction and content of their activities. That has become more pronounced with the government's interest in focusing on service delivery and infrastructure development. The SWC and government officials have described the ideal distribution of foreign funds receipts as 60 per cent for 'hardware' (activities that focus on infrastructural development, agriculture projects, etc) and 40 per cent toward 'software' (consisting of advocacy, rights-based programming, capacity building, awareness raising, etc).<sup>58</sup> As a result, all CSOs, regardless of their objectives and functions, are being asked to deliver on 'hardware', not only 'software'.<sup>59</sup> In fact, one of the main legal instruments regulating the CSO sector, the Social Welfare Act itself is very limiting, with the only terms featuring in its preamble being 'social welfare activities', 'social welfare-oriented activities', 'reconstruction activities', 'humanistic livelihood', and 'welfare-oriented institutions'.

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modified April 16, 2020, <https://www.icnl.org/resources/civic-freedom-monitor/nepal#glance>.

<sup>56</sup> International Centre for Not for Profit Law, 'Comments on Nepal's Draft Social Welfare and Development Act', last modified October 27, 2016, <https://www.icnl.org>.

<sup>57</sup> Ibid.

<sup>58</sup> A.R. Pokhrel, and P. Kafle, 'A Critique on Proposed Social Welfare and Development Act, 2073 of Nepal' LinkedIn, October 27, 2016, <https://www.linkedin.com/pulse/critique-proposed-social-welfare-development-act-2073-pokhrel>.

<sup>59</sup> ICNL, *Assessment of the Legal Environment for Civil Society and Media in Nepal*.



In a similar vein, a 2017 government report on foreign aid mobilisation, while acknowledging the role of CSOs in national development, defines their function as ‘delivery of services in rural areas, enhancement of quality of life of the people and human capital development.’<sup>60</sup> Such a re-orientation of the development agenda has led to ideas of inclusion, human rights, and protection of minorities taking a backseat, and created obstacles for organisations working in these areas. An SWC official was even more forthright when he admitted that the SWC ‘will be also vigilant on NGOs that are focused on advocacy-related works that contradict promotion of social harmony’ (see also Box 4).<sup>61</sup> The ‘promotion of social harmony’ being very vague and subject to all kinds of interpretation, there is every possibility of it being used to discredit activities that call for greater social and political inclusion or for overcoming religious, ethnic, and sexual majoritarianism.

There are also laws that have a negative impact on the freedom of expression. In particular, the National Broadcasting Act 1993 enables the government to prevent the broadcast of any programme that goes against the ‘national interest’.<sup>62</sup> The Press and Publication Act 1991, too, restricts the publication of materials that, among others, undermines the ‘sovereignty and integrity of Nepal’,

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<sup>60</sup> Ministry of Finance, Government of Nepal, *A Study on Foreign Aid Mobilisation in Federal Nepal* (Kathmandu: Government of Nepal, 2017).

<sup>61</sup> P.M. Shrestha, ‘Social Welfare Council Tightens Noose on Local NGOs’, *The Kathmandu Post*, December 03, 2019, <https://tkpo.st/33BMck8>.

<sup>62</sup> National Broadcasting Act, 2050, Nepal Law Commission (1993), Section 7, <http://www.lawcommission.gov.np/en/wp-content/uploads/2018/10/national-broadcasting-act-2049-1993.pdf>.

and disrupts security, peace, and order in the country.<sup>63</sup> There is also a new law that has had a chilling effect on free speech, the Electronic Transactions Act 2008, which codifies the punishment for publication of materials which may spread hate or jealousy against anyone or jeopardise the harmonious relations among the peoples of various castes, ethnicities, and communities.<sup>64</sup> Its vague stipulations can be and has been used by government authorities to control and repress anti-government content in the electronic media. One prominent example was the arrest, invoking the Act, of a former government secretary for criticising the current government and its ministers through his social media posts.<sup>65</sup>

### **Post-2015 Civic Space**

Starting with the proposed Social Welfare and Development Act of 2014, there have been several other legislative or policy attempts to control civic space in the country. The Bill to Amend and Consolidate Laws Relating to Establishment, Registration and Operation of Social Organisations 2019 is repressive, as, among other restrictions and bureaucratic hurdles, it severely curtails the spontaneous emergence of actors to protest against or mobilise for a cause.<sup>66</sup> If passed in its current form, the new law would require CSOs to limit their scope of work, as well as geographical area of

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<sup>63</sup> Press and Publication Act 2048, Nepal Law Commission (1991), Section 14, <http://www.lawcommission.gov.np/en/archives/category/documents/prevailing-law/statutes-acts/press-and-publication-act-2048-1991>.

<sup>64</sup> Electronic Transactions Act, 2063, Nepal Law Commission (2008) Section 47, <http://www.lawcommission.gov.np/en/wp-content/uploads/2018/10/electronic-transaction-act-2063-2008.pdf>.

<sup>65</sup> Some musicians and comic personalities have also been arrested for creating ‘disharmony’ since the Act was passed. See: S. Dhungana, ‘Attorney’s Office File a Court Case against Former Government Secretary Upadhyaya for Cybercrime’, *The Kathmandu Post*, April 26, 2020, <https://tkpo.st/2S8ZH8a>. The same Act was used to arrest a Nepali comedian in 2019 for criticising a Nepali film in an online video, leading to a massive outcry. Himalayan News Service, ‘Activists Protest against Arrest of a Youtuber’, *The Himalayan Times*, June 12, 2019. <https://thehimalayantimes.com/kathmandu/activists-protest-against-arrest-of-a-youtuber-pranesh-gautam>.

<sup>66</sup> J. Lama, ‘Sarkaarle sangha sanstha banda garne bidheyak lyayo’ [‘The Government Has Brought Acts to Shut down Organisations’], *OnlineKhabar*, January 21, 2020, <https://www.onlinekhabar.com/2020/01/830189#.XiaCTrTu1bs.email>.

**Table 1: Key Laws and Regulations Governing Civil Society Organisations in Nepal**

<b>Year of Enactment</b>	<b>Act</b>	<b>Specific implications for civil society organisations</b>
<b>Existing</b>		
1961	National Directive Act	The government can issue orders and instructions to organisations registered under the Act with regard to their activities as deemed appropriate. Any orders or instructions issued by the government is final and cannot be questioned in any court of law.
1977	Association Registration Act	The Act details requirements for registration and (annual) renewal, and of approval from the government. All of these provisions can be used for delaying the CSO registration process even though the Act provides no specific ground to reject an application for registration.
1992	Social Welfare Act	CSOs receiving foreign funding have to be affiliated with the SWC under this Act. In addition, CSOs must also receive case-by-case project approval in order to receive such funds from foreign sources. INGOs are also required to affiliate with the SWC.
2006	Companies Act	The Act has some safeguards against arbitrary denial of registration of any company even though it has some operational requirements for non-profit companies which do not apply to for-profit groups.
2012	Local Government Resource Mobility and Management Directive	CSOs need to provide details of activities to local authorities for the renewal process. In planning development projects, CSOs are required to prioritise projects currently under operation in local areas.
2017	Local Government Operation Act	Encourages CSOs, including NGOs, user committees, cooperative institutions, and other social and community organisations, to work in coordination with local governments. Several types of work require coordination and prior approval from local governments.

Year of Enactment	Act	Specific implications for civil society organisations
2019	International Development Cooperation Policy	International aid mobilised through Nepali groups has to be in line with government priorities, which is identified mostly as infrastructure development.
<b>Proposed</b>		
2014	Social Welfare and Development Act	Requirement of permission from Foreign Ministry; dissolution of NGO possible on orders of local authorities; SWC has the power to suspend or dissolve the Executive Committee of NGOs if engaged in activities that contravene their memorandum of understanding, or prevailing laws.
2018	National Integrity and Ethics Policy	Requires groups to seek government permission to receive foreign grants. INGOs banned from advocating on policy issues and from making 'inappropriate allegations', 'spreading ill will', or doing anything to 'jeopardise the Nepali civilisation, culture, social relationships and harmony'.
2019	Bill to Amend and Consolidate Laws Relating to Establishment, Registration and Operation of Social Organisations	Meant to replace the Association Registration Act 1977, the National Directive Act 1961, and the Social Welfare Act 1992, CSOs are directed to choose only one area of work among 13 functional categories.

functioning.<sup>67</sup> Likewise, the proposed National Integrity and Ethics Policy 2018 stressed strong vigilance over the non-government and private sectors along with burdensome reporting and procedural requirements, increased restrictions on scope of activities as well as access to funding.<sup>68</sup> The proposed Policy also stipulates that INGOs, specifically, would not be allowed to engage in projects that influence the drafting of laws and policies in the country, that

<sup>67</sup> Bill to Amend and Consolidate Laws Relating to Establishment, Registration and Operation of Social Organisations, 2075, National Assembly (2019).

<sup>68</sup> T.R. Pradhan, 'Integrity policy draft draws NGOs' flak', *The Kathmandu Post*, April 15, 2018, <http://kathmandupost.ekantipur.com.np/news/2018-04-15/integrity-policy-draft-draws-ngos-flak.html>.

they may only send those reports to their headquarters that have received approval from the government, have to get their budget and programmes approved by the Finance Ministry, and that they would be banned if they tried to engage in proselytisation.<sup>69</sup> The International Development Cooperation Policy 2019 requires that ‘foreign grants which are mobilised through the budget system by the provinces and local levels will be provided as conditional grants’ and funds must be used according to the conditions stated in the related project agreement.<sup>70</sup> This ensures a large degree of control over the expenditure of the funds and further allows the central government to pick and choose areas of focus.

In June 2018, the Ministry of Home Affairs, issued a circular to the District Administration Offices ordering them to seek property details of office-bearers and staff of INGOs during their registration, renewal, or affiliation with the Social Welfare Council while also requiring NGOs to choose a specific sector of work, and mandating them to submit financial and activity progress reports every four months.<sup>71</sup> The Ministry retracted the first two provisions, following opposition from the NGO sector, although the last has surfaced in the new bill under consideration as mentioned above.<sup>72</sup> Complementing these efforts was a policy reportedly drafted by the Social Welfare Council to prevent CSOs from running programmes that could affect Nepal’s relations with India and China, code for the ‘Free Tibet’ movement as well as Tibetans’ transiting via Nepal to India, and the operation of madrassas in the region bordering India.<sup>73</sup>

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69 M. Bader, ‘In Nepal, proposed INGO regulation has sector fearful’, *DevEx*, May 01, 2018, <https://www.devex.com/news/in-nepal-proposed-ingo-regulation-has-sector-fearful-92647>.

70 P.M. Shrestha, ‘Provincial and Local Governments Told to Accept Foreign Aid Only after Centre’s Approval’, *The Kathmandu Post*, December 17, 2019, <https://tkpo.st/35tHAOK>.

71 P.M. Shrestha, ‘Non-government Organisations Concerned over a New Law to Regulate Them’, *The Kathmandu Post*, November 3, 2019, <https://tkpo.st/36urSnx>.

72 The Kathmandu Post, ‘Ministry Retracts Decision on NGO’, *The Kathmandu Post*, June 19, 2018, <https://kathmandupost.com/miscellaneous/2018/06/19/ministry-retracts-decision-on-ngos>.

73 P.M. Shrestha, ‘New Policy for Foreign Non-governmental Organisations Aims to Address Concerns Raised by India and China’, *The Kathmandu Post*,

There has been a parallel development with regard to the independence of the media as well. Nepal dropped six places on the Global Press Freedom Index in 2020, and was ranked 112th among 180 countries largely due to the ‘draconian laws’ introduced by the current administration since 2018.<sup>74</sup> This represents a gradual slide over the years: 106th in 2018 and 2019,<sup>75</sup> and 100th in 2017.<sup>76</sup> The updated Criminal Code of 2018 also threatens the media with journalists facing up to three years in prison and monetary fines for publishing information deemed ‘confidential’ under the Code.<sup>77</sup> In August 2020, a crew member of a music video released on YouTube was arrested on charges of ‘spreading communal hatred and burning the national flag’ under the Criminal Code.<sup>78</sup>

There have been legislations planned that would impinge on press freedom. The Media Council Bill 2019 seeks to fine journalists up to NPR 1 million (c. USD 9,000) if found guilty of libel or defamation.<sup>79</sup> The Mass Communications Bill 2019 has an even harsher restriction of up to 15 years’ imprisonment for ‘publishing or broadcasting contents deemed to be against sovereignty, territorial integrity and national unity’, which, again, is a broad stipulation open to interpretation.<sup>80</sup> The Information

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January 12, 2020, <https://tkpo.st/2QMBSm9>.

<sup>74</sup> The ranking is done by Reporters Without Borders. See: C.K. Mandal, ‘Nepal Loses Six Spots on Global Press Freedom Index to Rank 112th Out of 180 Countries’, *The Kathmandu Post*, April 22, 2020, <https://tkpo.st/2XV3GbW>.

<sup>75</sup> Mandal, ‘Nepal Loses Six Spots on Global Press Freedom Index to Rank 112th Out of 180 Countries’.

<sup>76</sup> Kathmandu Tribune, ‘Nepal ranks 100 in 2017 World Press Freedom Index’, *Kathmandu Tribune*, April 27, 2017, <https://www.kathmandutribune.com/nepal-ranks-100-in-2017-press-freedom-index>.

<sup>77</sup> ‘Press Freedom at Risk with New Criminal Code Restrictions’, CIVICUS, last modified October 16, 2018, <https://monitor.civicus.org/updates/2018/10/16/press-freedom-risk-new-criminal-code-restrictions>.

<sup>78</sup> Himalayan News Service, ‘Crew Member of Controversial Music Video Held’, *The Himalayan Times*, August 19, 2020, <https://thehimalayantimes.com/nepal/crew-member-of-controversial-music-video-held>.

<sup>79</sup> *Media Council Bill 2075*, National Assembly (2019), <https://na.parliament.gov.np/uploads/attachments/o8lmmh8mitfvgdsg.pdf>, Section 18.

<sup>80</sup> B. Ghimire, ‘Government is Working on Mass Media Bill with Harsher Provisions for Media Sector’, *The Kathmandu Post*, August 10, 2019, <https://kathmandupost.com/national/2019/08/10/after-it-and-media-council-bills-government-is-working-on-mass-media-bill-with-harsher-provisions-for-media-sector>.

Technology Bill of 2019 criminalises people for posting content on social media deemed to be against ‘national unity, self-respect, national interest, relationship between federal units’.<sup>81</sup> None of the three aforementioned bills have been passed yet since the government is reportedly unwilling to stir up controversy,<sup>82</sup> and is facing opposition from members of their own party,<sup>83</sup> besides the journalists.<sup>84</sup> Regardless of such opposition, in practice, the space for an independent media is already shrinking, as seen by the arrest of the chief editor of an online news outlet in September 2018 under the Electronics Transaction Act 2008 for reporting on corruption over the sale of government-owned factory land.<sup>85</sup> It has also been reported that the Minister of Information and Communications directed the state-owned media to refrain from publishing news that could harm the government’s reputation.<sup>86</sup>

In September 2019, an amendment proposal to the Media Council Bill was filed to include a provision of a licence for journalists, which was widely interpreted as yet another obstacle to the functioning of free press in the country.<sup>87</sup> Similarly, the

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<sup>81</sup> *Information Technology Bill 2075*, House of Representatives (2019), <https://hr.parliament.gov.np/uploads/attachments/eucmqwyeyg3nf9ov.pdf>, Section 94.

<sup>82</sup> B. Ghimire, ‘Government is Working on Mass Media Bill with Harsher Provisions for Media Sector’, *The Kathmandu Post*, August 10, 2019, <https://kathmandupost.com/national/2019/08/10/after-it-and-media-council-bills-government-is-working-on-mass-media-bill-with-harsher-provisions-for-media-sector>.

<sup>83</sup> T.R. Pradhan, ‘Organisations Gear up for Protest against IT Bill Saying It Will Curb Freedom of Expression’, *The Kathmandu Post*, January 11, 2020, <https://tkpo.st/3a2KkFE>.

<sup>84</sup> Editorial, ‘The Media Council Bill Further Endangers Press Freedom’, *The Kathmandu Post*, May 13, 2019, <https://kathmandupost.com/editorial/2019/05/13/the-media-council-bill-further-endangers-press-freedom>.

<sup>85</sup> International Federation of Journalists, ‘Nepal: Editor Arrested on Cybercrime Charges’, *International Federation of Journalists*, September 11, 2018, <https://www.ifj.org/media-centre/news/detail/category/asia-pacific/article/nepal-editor-arrested-on-cybercrime-charges.html>.

<sup>86</sup> B. Sapkota, et al, *2018 Civil Society Organisation Sustainability Index* (USAID, 2018) <https://www.fhi360.org/sites/default/files/media/documents/resource-csosi-2018-report-asia.pdf>.

<sup>87</sup> ‘Restrictive Bills Still Being Pushed by Nepali Lawmakers as Protests around Xi’s Visit Stifled’, CIVICUS, last modified October 10, 2019, <https://monitor.civicus.org/updates/2019/10/16/restrictive-bills-being-pushed-nepal-silence-expression-while-journalists-remain-risk>.

Special Service Bill 2020, meant to set up ‘special intelligence service’, grants the National Investigation Department sweeping powers to ‘monitor, observe, and intercept, as well as document any conversation carried out through public or other means of communication, along with audio, visual, or electronic signals or details transmitted by any person or organization that seems suspicious’, with extremely lax oversight.<sup>88</sup>

The government also showed to clamp down against civil servants with the Federal Civil Service Bill 2019 preventing them from sharing personal views through the media.<sup>89</sup> A proposed provision in the Bill enables the government to ‘deprive retired civil servants of their pension if they criticise the government in a manner that can incite hatred, social conflict, and violence’.<sup>90</sup> This provision is regarded to have been included after some retired civil servants were critical towards the government’s activities on social media.<sup>91</sup>

### **Impediments to Civic Space for Religious Minorities**

Article 4 of the Constitution of Nepal 2015 describes Nepal as secular, but defines secularism as the protection of traditional religions and customs ‘practised from ancient times’, which is considered shorthand for Hinduism, the country’s dominant religion.<sup>92</sup> Due to the inability of the state to define secularism in terms of equality to all religions in both the 2015 and 2007 constitutions, simply declaring the country as secular has done little to provide

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<sup>88</sup> ‘Nepal: Amend Intrusive Intelligence Bill’, Human Rights Watch, May 29, 2020, <https://www.hrw.org/news/2020/05/29/nepal-amend-intrusive-intelligence-bill-0>.

<sup>89</sup> Federal Civil Service Bill 2019, National Assembly (2019), <https://hr.parliament.gov.np/uploads/attachments/pbuexolehcjydv.pdf>, Section 75.

<sup>90</sup> R.K. Kamat, ‘NC Opposes Any Move to Deny Pension to Retired Civil Servants’, The Himalayan Times, November 17, 2019, <https://thehimalayantimes.com/nepal/nc-opposes-any-move-to-deny-pension-to-retired-civil-servants>.

<sup>91</sup> T.R. Pradhan, ‘Bill Tabled to Restrict Civil Servants from Sharing Views on Social Media’. The Kathmandu Post, February 12, 2019, <https://kathmandupost.com/national/2019/02/12/bill-tabled-to-restrict-civil-servants-from-sharing-views-on-social-media>.

<sup>92</sup> C. Letizia, ‘Secularism and Statebuilding in Nepal’, in *Two Steps Forward, One Step Back: The Nepal Peace Process*, edited by D. Thapa and A. Ramsbotham (London: Conciliation Resources, 2017), 109-111.

recognition to religious minorities, namely, Buddhists, Muslims, Kirat, and Christians.<sup>93</sup>

The International Development Cooperation Policy 2019 directs foreign NGOs to fund development work rather than religious and political institutions, a form of resistance toward the notion that foreign funding is used as a covert means of proselytisation.<sup>94</sup> Acts of forced religious conversion are already prohibited by the Constitution as a criminal offence. For instance, in 2019, there were two separate instances of Christians being arrested under the suspicion of converting people to Christianity.<sup>95</sup> Individuals who have opined that religious conversion should be made legal have invited controversy, as seen by the case of the then British ambassador to Nepal, who wrote an open letter to the then CA asking them to include the right to conversion in the constitution.<sup>96</sup>

The 2019 Policy is all the more jarring since apart from Buddhist monasteries, 'all religious groups must register as NGOs or non-profit organisations to own land or other property, operate legally as institutions, or gain eligibility for public service-related

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<sup>93</sup> The percentage of Hindus in the country has been decreased over the years, 86.5 per cent in 1991 to 80.6 in 2001 before inching up to 81.3 in 2011. The proportion of Buddhists and Kirats has seen a corresponding rise and decrease whereas those of Christians and Muslims has seen rising steadily: Buddhists from 7.8 per cent in 1991 to 10.7 in 2001 and 9.0 in 2011; Muslims from 3.5 in 1991 to 4.2 in 2001 to 4.4 in 2011; Kirat from 1.72 per cent in 1991 to 3.6 in 2001 to 3.04 in 2011; and Christians from 0.17 per cent in 1991 to 0.4 in 2001 to 1.4 in 2011, Central Bureau of Statistics National Data Portal, accessed June 2, 2020, <http://nationaldata.gov.np/StaticReport?tglId=1001&tsgId=6&tid=1003>. However, regardless of the decline and increase, the number and power both of the minorities remain very limited, while Hinduism has retained its importance symbolically and politically. See: C. Letizia, 'Secularism and Statebuilding in Nepal'.

<sup>94</sup> P.M. Shrestha, 'New Policy Aims to Bar Foreign NGOs from Financing Religious and Political Organisations', *The Kathmandu Post*, June 2, 2019, <https://kathmandupost.com/national/2019/06/02/new-policy-aims-to-bar-foreign-ngos-from-financing-religious-and-political-institutions>.

<sup>95</sup> 'Christians Seized by Police While Training Pastors in Nepal', Barnabas Fund, April 24, 2019, <https://barnabasfund.org/en/news/christians-seized-by-police-while-training-pastors-in-nepal>; 'Three Foreigners Arrested Over Religious Conversion Accusations in Nepal', New Spotlight Online, July 24, 2019, <https://www.spotlightnepal.com/2019/07/24/three-foreigners-arrested-over-religious-conversion-accusations-nepal>.

<sup>96</sup> R.R. Subedi, 'Envoy Sparks Storm of Conversion Controversy', *The Rising Nepal*, undated, <http://therisingnepal.org.np/news/568>.



government grants and partnerships'.<sup>97</sup> This creates an inherent problem as religious groups must function as an NGO, and NGOs that receive foreign funding cannot undertake religious activities. There have also been reports of the Social Welfare Council carrying out investigations of NGOs for allegedly carrying out forced religious conversion.<sup>98</sup>

Contradictory laws that disadvantage certain communities over others also still exist in Nepal such as the criminalisation of slaughtering of cows, animals sacred only to Hindus. In 2018/19, 34 such cases were registered with the Supreme Court.<sup>99</sup> Nepal's Criminal Code that came into effect in August 2018 imposed punishment on those 'harming the religious sentiment' of any caste, ethnic community, or class,<sup>100</sup> a clause open to broad and potentially harmful interpretations to the detriment of religious minorities. Besides Muslims and Christians, other religious minorities such as Kirat (3.0 per cent) also face obstruction in observing the last rites for their deceased, specifically in the urban areas of the country, even though a 2011 Supreme Court ruling requires 'the government to provide protection for religious groups

<sup>97</sup> United States Department of State, *International Religious Freedom Report for 2019* (Washington D.C.: Office of International Religious Freedom, 2019).

<sup>98</sup> C.L. Tiwari, 'SWC Probing NGOs for Forceful Religious Conversion', myRepublica, September 17, 2017. <https://myrepublica.nagariknetwork.com/news/27720>.

<sup>99</sup> The years 2018/19 spans the Nepali fiscal year 2075 BS. See: S. H. Gyawali, 'Criminalisation of Cow-Slaughter Is a Tool of Caste Terror', *The Record*, June 14, 2019, <https://www.recordnepal.com/podcast/criminalization-of-cow-slaughter-is-a-tool-of-caste-terror>.

<sup>100</sup> United States Department of State Bureau of Democracy, *International Religious Freedom Report for 2018* (Washington D.C.: Bureau of Democracy, Human Rights, and Labour, 2018).

carrying out funeral rites in the exercise of their constitutional right to practice their religion'.<sup>101</sup>

The victory of Hindu nationalist Bharatiya Janata Party in the Indian elections in May 2014 has encouraged the growth of the anti-secular Hindu right in Nepal as well, with Muslims and Christians being the main targets.<sup>102</sup> Christian faith-based NGOs report facing increased scrutiny in their hiring practices, especially when they seek to hire members of the Christian faith for tasks that require knowledge of the religion.<sup>103</sup> The 2018 Pew Research Centre report on freedom of religion also indicates that the level of social hostilities towards religious minorities in Nepal rose from moderate levels in 2014 to high levels in 2015 and 2016.<sup>104</sup>

Tibetan refugees, who are predominantly Buddhist, report increasing restrictions in voicing their political opinions over the years as they have been barred from protesting and even from celebrating the birthday of their spiritual leader, the Dalai Lama. In October 2019, Tibetan refugees reported being placed under surveillance during the visit of the Chinese president, Xi Jinping, to Nepal.<sup>105</sup> Several campaigners of the 'Free Tibet' movement and human rights activists were detained in Kathmandu in the lead-up to and during Xi's visit.<sup>106</sup>

### **Reactions to Attempts to Curtail Civic Space**

There has been widespread opposition to the various attempts to pass laws that could systematically curtail civil liberties in the country. The American ambassador to Nepal criticised the proposed

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<sup>101</sup> Ibid.

<sup>102</sup> C. Letizia, 'Secularism and Statebuilding in Nepal'.

<sup>103</sup> P. Khadka, 'Challenging Time for Nepal NGOs', *Union of Catholic Asian News*, June 13, 2019, <https://www.ucanews.com/news/challenging-time-for-nepal-ngos/85388>.

<sup>104</sup> Pew Research Centre, *Global Uptick in Government Restrictions* (Washington D.C.: Pew Research Centre, 2018).

<sup>105</sup> S. Thapa, Y. D. Gurung and J. Baniya, 'Living in Limbo: Tibetan and Bhutanese Refugees in Nepal', in: *South Asia State of Minorities Report 2019 Migrants, Refugees and the Stateless*, edited by D. Thapa, S. Thapa and R. Singh (South Asia Collective, 2019), 65-90.

<sup>106</sup> Himalayan News Service, '11 Tibetan Refugees among 22 Held', *The Himalayan Times*, October 13, 2019, <https://thehimalayantimes.com/kathmandu/11-tibetan-refugees-among-22-held>.

Social Welfare and Development Act as appearing to ‘run counter to the constitution’s call for a “single-door system,” requiring CSOs to obtain multiple approvals from different agencies in order to operate’.<sup>107</sup> The 2018 circular by the Ministry of Home Affairs that would have placed restrictions over CSOs was withdrawn due to ‘acute pressure from the NGO sector and around a dozen formal and informal dialogues with government agencies’.<sup>108</sup> The National Integrity and Ethics Policy also caused several stakeholders to express reservations and concern. The NGO Federation, in particular, took up the mantle to bring to the government’s attention the overly restrictive provisions of the draft.<sup>109</sup> The president of the NGO Federation released a statement expressing concern that ‘the ministry is focusing on controlling non-government organisations, instead of regulating and facilitating them’.<sup>110</sup> Stakeholders also worried that the provisions of the draft can be ‘misused to silence critics at home and restrict the activities of international groups in Nepal’.<sup>111</sup> Some critics also assert that the draft is a ‘backlash against the funding indigenous and excluded groups received from western donors during the Constitution-drafting process’.<sup>112</sup>

Four UN Special Rapporteurs expressed reservations on the proposed National Integrity and Ethics Policy, arguing that ‘some of the provisions of the Integrity Policy would have a serious negative effect on the activities of civil society and restrict the freedom of expression and freedom of association’.<sup>113</sup> Local actors

107 A.B. Teplitz, ‘Inclusive Civic Participations: Where Democracies Thrive’, *The Himalayan Times*, February 20, 2017, <https://thehimalayantimes.com/opinion/inclusive-civic-participation-democracies-thrive>.

108 ‘Ministry Retracts Decision on NGOs’, *The Kathmandu Post*, June 19, 2018, <https://kathmandupost.com/miscellaneous/2018/06/19/ministry-retracts-decision-on-ngos>.

109 T.R. Pradhan, ‘Integrity Policy Draft Draws NGOs’ Flak’, *The Kathmandu Post*, April 15, 2018, <http://kathmandupost.ekantipur.com.np/news/2018-04-15/integrity-policy-draft-draws-ngos-flak.html>.

110 P.M. Shrestha, ‘Non-government Organisations Concerned over a New Law to Regulate Them’, *The Kathmandu Post*, November 3, 2019, <https://tkpost/36urSnx>.

111 O.A. Rai, ‘The Crow and the Scarecrow’, *Nepali Times*, May 18, 2018, <https://www.nepalitimes.com/banner/the-crow-and-the-scarecrow>.

112 Ibid.

113 ‘PM Vents Ire on Foreign Missions, I/NGOs for ‘Unwarranted Interest’ in Integrity Policy’, *Republica*, July 27, 2018, <https://myrepublica.nagariknetwork>.

### Box 5: Civic Space during Covid-19

The declaration of Covid-19 as a worldwide pandemic seems to have led governments around the world to seize power in the name of combating the outbreak, in lack of safeguards as well as mechanisms to safely devolve the power once the worst is over.\* The Government of Nepal has also displayed this form of control over civic space during the pandemic, from inconsistency in their approach toward CSOs, and suppressing peaceful protestors in an attempt to silence all forms of criticism.†

The Women and Social Committee of the House of Representatives has directed the government to waive the requirement for CSOs to submit periodic activity reports. Recognising the pandemic as a problem common to all, the Committee directed the government to be cognisant of the necessity to revise plans as a result of the pandemic.‡ The Committee also directed the government to enable proper utilisation of the resources available with CSOs.§ Parliamentarians also stated that NGOs must be of use to the general population during such disasters.¶ Such a sentiment can be very problematic as it presumes that these organisations are to be mobilised in a situation of disaster.

For its part, the SWC directed all NGOs to commit 20 per cent of their budget of the year 2020 to the Covid-19 response.# There was no recognition of the fact that this requires coordination with donors and the government itself, and even in cases where the funds could be re-directed, the SWC has had bureaucratic delays in providing approval to do so, further derailing the process.\*\*

The month of June, specifically, saw spontaneous protests by youth against the government's passive handling of the Covid-19 pandemic, including alleged corruption in the purchase of medical supplies, perceived nonchalance to the plight of migrant workers abroad and low-income households in the country attempts by the government to pass repressive measures of surveillance amidst the pandemic, and mismanagement of quarantine facilities.†† Problematically, however, the government chose to repress the largely peaceful protests, including by resorting to detention.††

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\* S. Gebrekidan, 'For Autocrats, and Others, Coronavirus Is a Chance to Grab Even More Power', *The New York Times*, March 30, 2020, <https://www.nytimes.com/2020/03/30/world/europe/coronavirus-governments-power.html>.

† Nepali Times, 'Lockdown Crackdown', *Nepali Times*, April 29, 2020, <https://www.nepalitimes.com/editorial/lockdown-crackdown>.

‡ OnlineKhabar, 'Parliamentary Committee Directs: Free NGOs from the "Burden" of Submitting Reports' [Sansadiya samitiko nirdeshan—gai.sa.sa. lai pratibedan bujhaunuparne jhanjhat bata mukta garideu], *OnlineKhabar*, May 14, 2020, <https://www.onlinekhabar.com/2020/05/864057>.

§ Kantipur, 'Parliamentary Committee Directs for Resources of NGOs to be Used for Corona Treatment' [Gairsarkari sansthaka sadhan-shrot corona upacharma lagauna sansadiya samitiko nirdeshan], *Kantipur*, May 14, 2020, [https://ekantipur.com/news/2020/05/14/158945223717318692.html?fbclid=IwAR0WUk-OWV62Lg\\_227C07628P18eao5dnE81bjT0c3mgNVonfnKu0VYWARI](https://ekantipur.com/news/2020/05/14/158945223717318692.html?fbclid=IwAR0WUk-OWV62Lg_227C07628P18eao5dnE81bjT0c3mgNVonfnKu0VYWARI).

|| Ibid.

# M. Pokhrel, 'Due to the Pandemic, INGO Money Has Not Been Spent, Government Moves to Spend It on Corona Treatment' [Mahamari ka karan INGO ko rakam kharcha bhaena, corona upacharma kharchina sarkarko pahal], April 27, 2020, <https://www.himalkhabar.com/news/113486>.

\*\* P.M. Shrestha, 'Foreign Non-government Organisations Commit Rs 1.2 Billion to COVID Response', *The Kathmandu Post*, May 31, 2020, <https://tkpo.st/3cl8rz7>.

†† 'Youths Defy Arrest Warning and Stage Peaceful Rallies Demanding Government Accountability Regarding COVID-19 Response', *The Kathmandu Post*, June 12, 2020, <https://kathmandupost.com/visual-stories/2020/06/12/youths-led-peaceful-protests-against-government-continue-in-various-cities>.

‡‡ 'Police Use Teargas, Water Cannons to Disperse Protesters', *The Kathmandu Post*, June 11, 2020, <https://kathmandupost.com/visual-stories/2020/06/11/police-use-teargas-water-cannons-to-disperse-protesters>.

working in the field of civil liberty, freedom of expression and press freedom have argued that these controversial bills and decisions aim to curtail civil liberties.<sup>114</sup> CSOs have also been raising concerns on some provisions of the Bill to Amend and Consolidate Laws Relating to Establishment, Registration and Operation of Social Organisations 2019 that appear to 'manifest the "controlling mindset" of the government'.<sup>115</sup>

[com/news/pm-vents-ire-on-foreignmissions-i-ngos-for-unwarranted-interest-in-integrity-policy/](https://www.kathmandupost.com/news/pm-vents-ire-on-foreignmissions-i-ngos-for-unwarranted-interest-in-integrity-policy/); Mandates of 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 and the Special Rapporteur on freedom of religion or belief REFERENCE: OL NPL 1/201811 July 2018.

114 P.M. Shrestha, 'Non-government Organisations Concerned over a New Law to Regulate Them', *The Kathmandu Post*, November 3, 2019, <https://tkpo.st/36urSnx>.

115 'Nepal—ICNL', International Centre for Not for Profit Law (ICNL), last modified April 16, 2020, <https://www.icnl.org/resources/civic-freedom-monitor/nepal#glance>.

Particularly in response to the UN Special Rapporteurs' reservation, K.P. Oli, the Prime Minister, alleged that the diplomatic missions had begun raising a 'hue and cry' even though the government had not completed introducing the policy and further questioned the interest of 'foreigners' in a policy that was yet to be implemented.<sup>116</sup> The government has also publicly questioned the credibility and accountability of CSOs in several instances.<sup>117</sup> In another development that cause concern, the Commission for the Investigation of Abuse of Authority, the statutory body mandated to check corruption in government, has been demanding expansion of its authority to also look into corruption and irregularities of NGOs.<sup>118</sup>

## **Conclusion**

A vibrant and independent civic space is intrinsic to a democratic society and the rule of law. While civic space in Nepal has largely been guided by the regime in place, it has also played a critical role in popular movements at various points in the country's recent history. While civic space was closed in the oligarchic Rana regime, the era of democratic politics that followed it was conducive to the growth of CSOs, although as a means to complement the activities of the state. CSOs also faced a severely restrictive environment during the Panchayat regime. Following the 1990 democratic transition, the space was created for participation of civic actors in policymaking, and in advocating for change. The Maoist insurgency resulted in the growth of an active civic space for defenders of democracy and human rights. The period following the end of the insurgency, however, saw the rise of fragmentation and partisanship with civil society which had been at the forefront of demanding change. The nature of civic space has thus been constricted while it has seen a

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<sup>116</sup> 'PM Vents Ire on Foreign Missions, I/NGOs for 'Unwarranted Interest' in Integrity Policy', *Republica*, July 27, 2018, <https://myrepublica.nagariknetwork.com/news/pm-vents-ire-on-foreignmissions-i-ngos-for-unwarranted-interest-in-integrity-policy/>.

<sup>117</sup> 'Building CSO Enabling Environment in Nepal (BEEN)', NGO Federation of Nepal, accessed June 26, 2020, <http://www.ngofederation.org/node/271>.

<sup>118</sup> R. Bajgain, 'CIAA Demands Jurisdiction over Private Sector as Well' [niji chhetra ma haat halna paunuparne akhtiyar ko maag], *OnlineKhabar*, May 14, 2020, <https://www.onlinekhabar.com/2020/05/864034>.

concurrent trend of the state introducing different provisions to curtail the space for civil activity in Nepal, a development that has become more pronounced over the years.

The state has demonstrated greater interest in CSOs' activities in development work instead of their advocacy and human rights functions. Several acts and draft bills have been designed to provide oversight authority to the government that have the potential to severely hinder the process of registration and functioning of CSOs. Laws and regulations that increase surveillance of prominent civil society actors as well as regulate the media's freedom of expression have also been drafted in the past few years. Citizens are also vulnerable to the use of excessive force by law enforcement agencies, and journalists face the risk of physical attack as well as criminal defamation charges. The country also seems to be moving in the direction of restrictive civic space with the planned adoption of restrictive laws governing CSOs, including receipt of foreign funds.

### **Recommendations**

Based on the findings of this chapter, the following recommendations have been made to ensure that civic space in Nepal, specifically for the minorities, remains protected.

- i. Enable civil society organisations and non-governmental organisations to function without arbitrary administrative and bureaucratic hurdles.
  - Lift the threat of cancellation of registration of CSOs.
  - End unnecessary and uncalled-for requirements to receive funds from foreign sources, while ensuring that the standards of transparency and accountability are being met.
- ii. Ensure that an active and vocal civil society is present in the country by ceasing to repress dissent and peaceful protests.
- iii. Ensure that the media remains independent by ceasing all undue pressure in the guise of regulations to preserve 'national interest'.
- iv. Enable freedom of expression by discouraging and investi-

- gating unwarranted detention and arrests of individuals.
- v. Ensure that the government adheres to the international instruments that it is signatory to, such as the International Covenant on Civil and Political Rights (ICCPR), Busan Partnership for Effective Development Cooperation, and the Addis Ababa Action Agenda.
  - vi. Ensure that the government upholds the commitments to inclusion, secularism and equality for all enshrined in the Constitution of Nepal 2015.

## Annex

### Assessment of Civic Space in Nepal: Survey Findings

An online expert survey on civic space in Nepal since the current government assumed power in February 2018 was conducted online with participants chosen through purposive sampling.<sup>119</sup> Experts in various fields, including academia, media, advocacy, and development works, were identified with diversity in terms of caste/ethnicity, gender, and geographical representation taken into consideration. The survey was administered via SurveyMonkey after receiving consent from the participants. Of the 85 experts approached, a total of 51 individuals responded. There were 32 male and 19 female participants with 29 self-identifying themselves as a member of one or more minority groups.

#### Right to Civil Liberty

Survey results suggest that a majority of the respondents believe there is wide variance on how much civil liberties different groups enjoy (See Figure 1). A substantial plurality or majority disagree that members of different social groups, economic status, genders, and sexual orientations enjoy the same level of civil liberties. It is significant that not a single respondent agreed strongly with any of these four propositions. (The numbers in parentheses denote the question in the survey. See the annex for the full questionnaire.)

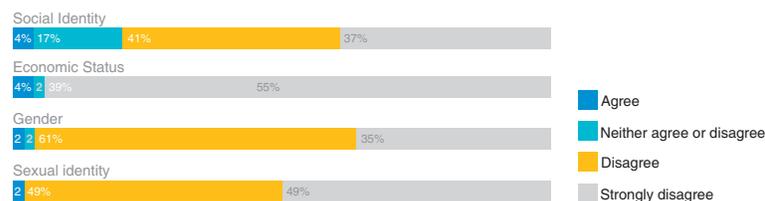


Figure 1: Civil Liberties Enjoyed Equally by Different Groups

<sup>119</sup> The survey questions drew references from other similar surveys conducted in the issue, including the V-Dem Codebook. See Michael Coppedge et al., 'V-Dem Codebook v9' Varieties of Democracy (V-Dem) Project (2019). [https://www.v-dem.net/media/filer\\_public/e6/d2/e6d27595-9d69-4312-b09f-63d2a0a65df2/v-dem\\_codebook\\_v9.pdf](https://www.v-dem.net/media/filer_public/e6/d2/e6d27595-9d69-4312-b09f-63d2a0a65df2/v-dem_codebook_v9.pdf).

While a majority of the respondents agree that all groups have been allowed to form and register associations in order to advance their collective interests, the responses were divided with regard to the question whether the state has put any restrictions on registration and operation of CSOs (See Figure 2). While nearly 30 per cent of the respondents believed religious groups are not allowed to function freely, a majority believe that it has become more difficult in the operation of CSOs in general.

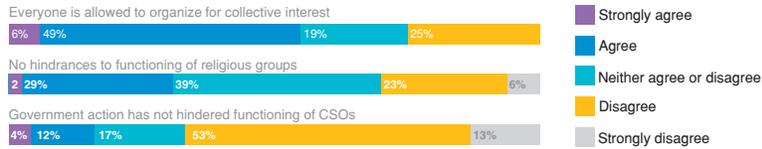


Figure 2: Freedom of Association in Practice

It is noteworthy that while only a small proportion of just over 10 per cent of the respondents believe there is lack of freedom of expression (See Figure 3), substantial majorities are of the view that the current government has been attempting to curtail the space for that freedom (See Figure 4).

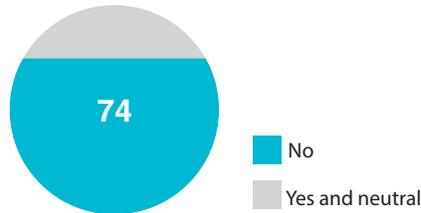


Figure 3: Existence of Full Freedom of Expression

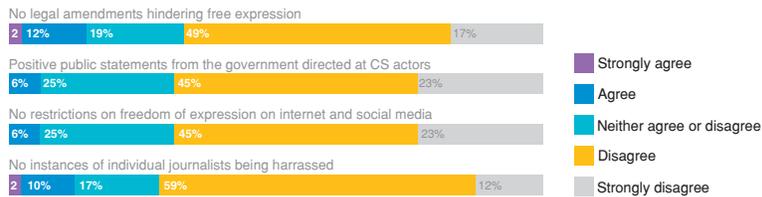


Figure 4: Freedom of Expression in Practice

A similar trend can be seen on freedom of assembly, whereby nearly four fifths of the respondents believe there is freedom of assembly in Nepal (See Figure 5). In contrast, a majority, an overwhelming one in the case of use of violence against protestors, believe the government has assailed that right in practice.

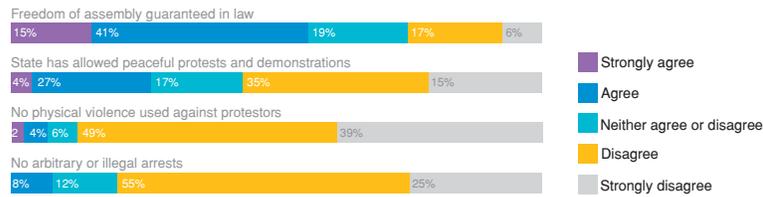


Figure 5: Freedom of Assembly in Practice

The respondents were mostly neutral when asked about how active the courts have become in passing judgements related to freedom of association, expression, and peaceful assembly, with nearly equal proportions believing the courts have or have not been progressive enough (See Figure 6).

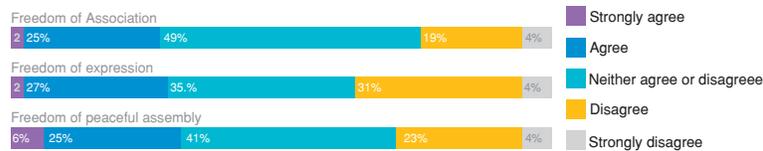


Figure 6: Progressive Court Judgement on Fundamental Freedoms

On the current government and its leadership, the survey results showed the majority of respondents agree that the prime minister is portrayed as being endowed with extraordinary abilities, and more than two thirds believe that the government has promoted a specific ideology or societal model as well as touted their performance to justify its rule (See Figure 7).

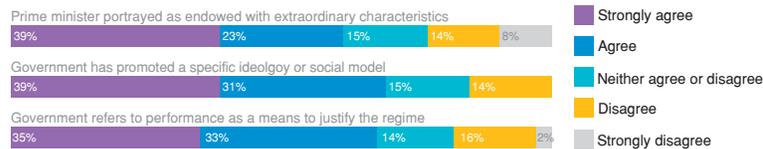


Figure 7: Legitimacy of the Current Government

# Closing Civic Space in Pakistan

Elaine Alam

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## Introduction

A rights-based framework of civic space cultivates a comparative and contextual analysis. In reference to these considerations, civic space can be defined as ‘the set of conditions that determine the extent to which all members of society, both as individuals and in informal or organised groups, are able to freely, effectively and without discrimination exercise their basic civil rights’.<sup>1</sup>

Freedom of association, assembly and expression are democratic in their vision and essence and are also indicators of a functional civic space. These rights are guaranteed by the Pakistani constitution. Article 16 of the 1973 constitution guarantees every citizen ‘the right to assemble peacefully and without arms, subject to any reasonable restrictions imposed by law in the interest of public order’.<sup>2</sup> Article 17 ensures every citizen ‘the right to form associations or unions’ but it’s not absolute in nature since it can be restricted in ‘the interest of sovereignty or integrity of Pakistan, public order or morality’. Similar conditions underlie the right to form or be a part of political parties. However, a caveat in the law elucidates that if the parties are objectionable, ‘the Federal Government shall, within fifteen days of such declaration, refer the matter to the Supreme Court whose decision on such reference shall be final’; and that every political party shall ‘account for

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<sup>1</sup> ‘Protecting civic space and the right to access resources’, UN Special Rapporteur, accessed July 14, 2020, <https://www.ohchr.org/Documents/Issues/FAssociation/GeneralPrinciplesProtectingCivicSpace.pdf>.

<sup>2</sup> Republic of Pakistan, *The Constitution of the Islamic Republic of Pakistan* (Islamabad: The National Assembly of Pakistan, 2012), [http://www.na.gov.pk/uploads/documents/1333523681\\_951.pdf](http://www.na.gov.pk/uploads/documents/1333523681_951.pdf).

the source of its funds in accordance with law'.<sup>3</sup> Article 19 of the Constitution states that every citizen 'shall have the right to freedom of speech and expression, and there shall be freedom of the press', but it can be restricted 'in the interest of the glory of Islam or the integrity, security or defense of Pakistan or any part thereof, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, commission of or incitement to an offence'.<sup>4</sup>

For the purpose of this research, secondary sources will be used to evaluate the extent to which the three aforementioned core principles of civic freedom have declined in Pakistan: freedom of association, freedom of assembly, and freedom of expression. These three tenets of open civic space have been chosen since they are the most politically charged in Pakistan. The state and army have been dangerously reactive when these three principles are exercised by Pakistani civilians. The legislative and normative practices to control these three aspects are some of the most alarming practices within the Pakistani state, including, but not limited to, enforced disappearances and charge of blasphemy. Their decline will be historically traced, with a focus on the status quo. The various minority groups in Pakistan will be analysed as a key stakeholder.

### **Methodology**

Primary and secondary data has been utilised in the course of this research. Besides an extensive review of literature, including independent reports and media articles on minorities, a survey was conducted online to gauge the perception of experts of civic space on the extent to which civil liberties have been violated in Pakistan. The survey was filled by 25 people aged between 20 and 80 years, 78 per cent of whom were female. A total of 72 per cent of the respondents were Muslim while 5.6 per cent were Christian, and 17 per cent of them did not adhere to any religion. Of the respondents, 72 per cent identified themselves as belonging to a religious minority, implying that that a majority of Muslim respondents belonged to minority sects. The findings of the survey

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<sup>3</sup> Ibid.

<sup>4</sup> Ibid.

are interspersed in the report, while the complete findings can be found in the Annex at the end of the chapter.

### **Historical Context**

Pakistan's transition towards electoral democracy in 2008 after spending a significant period of its history under direct military rule was a landmark event in the country's political evolution. Since then, Pakistan has experienced three elections, in 2008, 2013 and 2018, and seen two stable transfers of power from one political party to another. However, the quality of democracy in Pakistan has deteriorated over the past few years. According to the International Institute for Democracy and Electoral Assistance, in 2018, Pakistan regressed into hybridity,<sup>5</sup> a term used for governments that combine democratic traits such as frequent and direct elections with autocratic ones such as political repression.<sup>6</sup> The 2019 Economist Intelligence Unit's Democracy Index also categorises Pakistan as a hybrid regime, with a ranking of 108 out of 167, and its score increased from 4.17 out of 10 in 2017 to 4.25 in 2019, implying that military interference in domestic affairs had increased.<sup>7</sup> Understandably, the country is a long way from becoming a full democracy, as indicated by its inability to cross a threshold of 4.64 in 2014.<sup>8</sup>

In particular, liberal democracy has failed to take root in Pakistan. According to the Freedom House, Pakistan scores only 22 out of a total of 60 for civil liberties in its 2020 Freedom in the World report.<sup>9</sup>

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<sup>5</sup> International Institute for Democracy and Electoral Assistance, *The Global State of Democracy 2019* (Stockholm: International IDEA, 2019), 169, <https://www.idea.int/publications/catalogue/global-state-of-democracy-2019>.

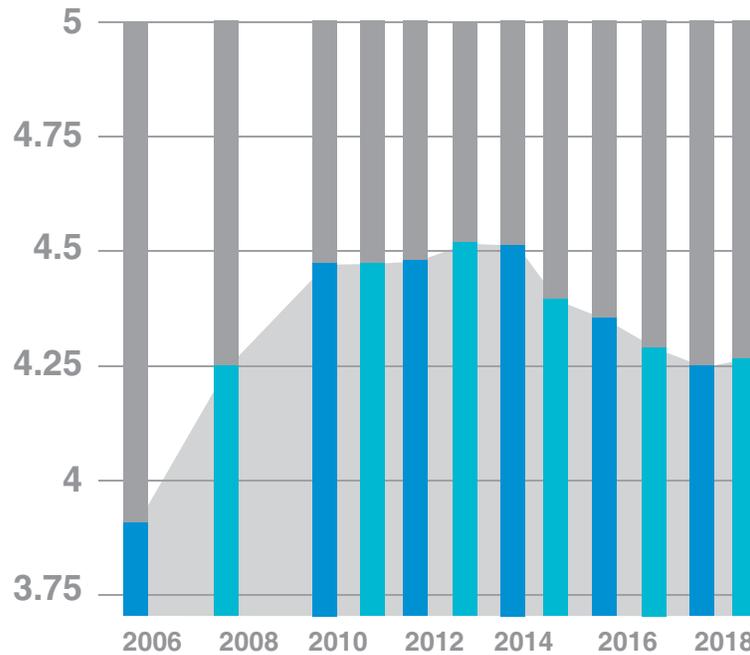
<sup>6</sup> 'Hybrid Regimes', Oxford Bibliographies, accessed August 31, 2020, <https://www.oxfordbibliographies.com/view/document/obo-9780199756223/obo-9780199756223-0167.xml>.

<sup>7</sup> The News, 'Economist Intelligence Unit's Democracy Index: Democracy in PPP, PML-N Eras Better than in Present Govt', *The News*, January 23, 2020, <https://www.thenews.com.pk/print/602673-economist-intelligence-unit-s-democracy-index-democracy-in-ppp-pml-n-eras-better-than-in-present-govt>.

<sup>8</sup> 'Democracy Index 2019', *The Economist Intelligence Unit*, <https://www.eiu.com/topic/democracy-index>.

<sup>9</sup> Liberal democracy refers to a system of government which ensures transparent elections and where the judicial system has a significant equalising leverage to ensure accountability of the elected representatives. See: 'Freedom

**Figure 1: Pakistan's Scores in the Economist Intelligence Unit's Democracy Index, 2006–2019**



Source: 'Democracy Index 2019', The Economist Intelligence Unit, <https://www.eiu.com/topic/democracy-index.com/topic/democracy-index>.

The V-Dem project<sup>10</sup> also shows a sharp decline for Pakistan along several indicators, including freedom of association and liberal democracy indices, while other indicators, such as repression of civil society organisations and freedom of religion, have seen only slight increases. Government censorship has decreased owing to the increasing relevance of social media, with a formal social media wing also being used even by the current government. However, even

in the World 2020: Pakistan', Freedom House, accessed May 25, 2020, <https://freedomhouse.org/country/pakistan/freedom-world/2020>.

<sup>10</sup> Varieties of Democracy is a new approach to conceptualising and measuring democracy which reflects the complexity of the concept of democracy as a system of rule and distinguishes between five high-level principles of democracy: electoral, liberal, participatory, deliberative, and egalitarian, and collects data to measure these principles. See: 'Global Standards, Local Knowledge', Varieties of Democracy, accessed August 31, 2020, <https://www.v-dem.net/en>.

though that might have made it easier to report on discrimination, it has not translated into changes within the state-sanctioned legal and normative practices. The survey data also supports this.

In order to understand why political liberalism has had limited expression in Pakistan despite its democratic transition, it is critical to examine its political and institutional history. The early years of Pakistan's founding were pivotal in determining its subsequent political trajectory. At its inception, Pakistan faced several difficulties that put the very survival of the state at risk: an inflow of refugees from India, insufficient administrative staff, limited resources and the challenge of exerting control in areas where the ruling Muslim League's<sup>11</sup> presence was weak.<sup>12</sup> The Kashmir dispute, that began in 1947, and border issues on the Durand Line between Pakistan and neighbouring Afghanistan further endangered the existence of the newly founded state.<sup>13</sup> This complex social and political climate, with its extensive internal and external security challenges, compelled the political leadership to assert control over the country and steer policy. In particular, the threat from India encouraged the formation of a unified security state. As a result, the political leadership centralised power in the executive branch at the cost of dispersing power to the legislature, empowering political institutions and strengthening provincial governments.

Colonial heritage also played a significant role in facilitating centralisation of power. Pakistan inherited the 'vice regal model of government', a term coined to describe the colonial model of governance where the Viceroy and a centralised bureaucracy were responsible for running the affairs of the state.<sup>14</sup> The Government of India Act 1935 was adopted as the interim constitution with modifications according to the democratic and sovereign reality of

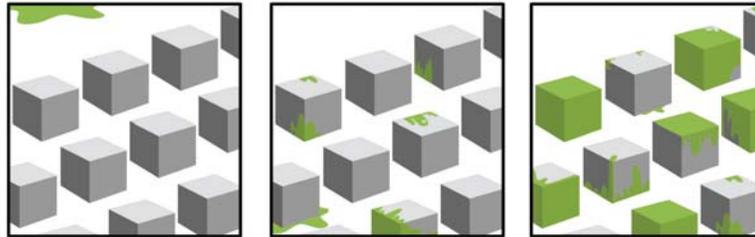
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11 The All-India Muslim League was a political party established in 1906 in British India. Its efforts for a separate homeland for the Muslims of India eventually led to the creation of Pakistan in 1947.

12 Hasan-Askari Rizvi, *Military, State and Society in Pakistan* (New York: St. Martin's Press, 2000), 57; Ayesha Jalal, *Democracy and Authoritarianism in South Asia* (Cambridge: Cambridge University Press, 1995), 49.

13 Hasan-Askari Rizvi, *Military, State and Society in Pakistan* (New York: St. Martin's Press, 2000), 59.

14 Kalim Bahadur, *Democracy in Pakistan: Crises and Conflicts* (New Delhi: Har-Anand, 1998), 34.



Pakistan.<sup>15</sup> Power was concentrated in the office of the Governor General, held by the founder of Pakistan, Muhammad Ali Jinnah, who headed ‘the executive, the cabinet and the assembly’.<sup>16</sup> The Governor General appointed the cabinet, headed the legislature, appointed judges, and had the power to dismiss ministers at his discretion.<sup>17</sup> The concentration of power led to the emergence and entrenchment of a political culture in which a single strongman provided direction and political leadership,<sup>18</sup> and thus stunted the growth of participatory governance.

Civilian governments in Pakistan also failed to institutionalise democratic principles and uphold civil liberties and the rule of law. After independence, constitutional and political crises ensued, and the political class failed to put together a viable constitution and prevent petty political disputes. The civilian government also sought to preserve its own narrow interests and establish control over politics. The Muslim League was a weak political party dominated by an elite class of politicians, and it struggled to generate mass support after the passing of Jinnah and Liaqat Ali Khan.<sup>19</sup> Fearing the numerical majority of Bengalis, who enjoyed a majority in East Pakistan, in parliament and limited outreach in the provinces, politicians in West Pakistan began courting the military and the bureaucracy to consolidate state control.<sup>20</sup>

<sup>15</sup> Aqil Shah, *The Army and Democracy* (Cambridge: Harvard University Press, 2014), 49.

<sup>16</sup> Ibid.

<sup>17</sup> Ibid.

<sup>18</sup> Christophe Jaffrelot, *The Pakistan Paradox* (Oxford: Oxford University Press, 2015), 198.

<sup>19</sup> Hasan-Askari Rizvi, *Military, State and Society in Pakistan* (New York: St. Martin’s Press, 2000), 69.

<sup>20</sup> Ayesha Jalal, *Democracy and Authoritarianism in South Asia* (Cambridge:

Thus began a tradition in which the Pakistani political class, at times, supports the military in order to quell the opposition and gain power, allowing the military to exercise control over governance through indirect means. One example of this phenomenon was the collaboration between the military and the Islami Jamhoori Ittehad (IJI), a political alliance allegedly sponsored and organised by the military's intelligence agency, to remove Benazir Bhutto from power on account of her anti-military actions and softer approach towards India, and install the pro-military Nawaz Sharif in her place.<sup>21</sup> It is also alleged that the incumbent government of Imran Khan suffers from extensive military interference in public policy and government decision-making.<sup>22</sup>

Failure to develop modern political parties and institute a culture of participatory politics also impedes democratic development. A significant issue in Pakistan is the lack of political parties that have not been organised around patronage politics and feudal relationships.<sup>23</sup> Electoral politics revolve around gaining access to patronage for specific constituencies rather than campaigning on a broad-based platform of commitment to specific principles and policy measures.<sup>24</sup> Voting occurs more along the lines of personalised alliances with particular political figures and less along adherence to ideological principles and party manifestoes. Both the urban and rural political class focus more on 'working lineage and *biradari*<sup>25</sup> connections and alliances than representing wider urban interests'.

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Cambridge University Press, 1995), 50-51.

21 Hasan-Askari Rizvi, *Military, State and Society in Pakistan* (New York: St. Martin's Press, 2000), 209; Samina Yasmeen, 'Democracy in Pakistan: The Third Dismissal', *Asian Survey* 34, no.6 (1994): 574, <https://doi.org/10.2307/2645342>; Seyyed Vali Reza Nasr, 'Democracy and the Crisis of Governability in Pakistan', *Asian Survey* 32, no.6 (1992): 523, <http://www.jstor.org/stable/2645158>.

22 'Army Tightens Grip on Pakistan as Imran Khan's Popularity Wanes', *Bloomberg*, June 10, 2020, <https://www.bloomberg.com/news/articles/2020-06-09/army-tightens-grip-on-pakistan-as-imran-khan-s-popularity-wanes>.

23 Nasreen Akhtar, 'Polarized Politics: The Challenge of Democracy in Pakistan', ResearchGate, Last Modified January 1 2009, [https://www.researchgate.net/publication/259838678\\_POLARIZED\\_POLITICS\\_THE\\_CHALLENGE\\_OF\\_DEMOCRACY\\_IN\\_PAKISTAN](https://www.researchgate.net/publication/259838678_POLARIZED_POLITICS_THE_CHALLENGE_OF_DEMOCRACY_IN_PAKISTAN).

24 Ibid.

25 *Biradari* is commonly used to refer to relatives, friends and acquaintances. Cited in Christophe Jaffrelot, *The Pakistan Paradox* (Oxford: Oxford University Press, 2015), 296.

Weak civilian institutions, a divided political class and the empowerment of non-elected institutions led to encroachment by the military over the political system. Military intervention in politics adversely impacted the evolution of liberal democracy, as each military ruler restricted political activity in order to consolidate authority and eliminate resistance. Ayub Khan (1958-1962), Yahya Khan (1969-1971), and Zia ul Haq (1977-1987) either banned political parties completely or severely curbed their activities.<sup>26</sup> Military regimes also took steps to further concentrate power in the executive. Although civilian governments have also displayed authoritarian tendencies in the past, changes introduced by largely unaccountable dictators subverted the political evolution of Pakistan's federal state and obstructed the emergence of a political culture revolving around debate, compromise, and institutional balance.

One of the most divisive constitutional amendments, the 8th amendment, was introduced by Zia ul Haq in 1985, which shifted executive power to the office of the president, along with the right to dissolve the National Assembly. The amendment hung like Damocles' sword over democratic governments, and was used to dismiss multiple civilian governments in the 1990s until it was repealed in 1997. Several of his laws have not been reversed yet, such as the provisions in the Hudood Ordinance pertaining to rape, that demanded the presence of four witnesses for prosecuting the rapist.<sup>27</sup> The ban on student unions continues to severely impede students' civic liberties by prohibiting collective action based on legitimate political grievances. Over the decades, it has decreased the politicisation of students by removing avenues of mobilisation.<sup>28</sup>

According to Jaffrelot, the political system in Pakistan 'keeps oscillating between the suppression and (re)conquest of public

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<sup>26</sup> Hasan-Askari Rizvi, 'Democracy in Pakistan' in *Panorama: Insights into Asian and European Affairs*, edited by Wilhelm Hofmeister (Singapore: Konrad-Adenauer-Stiftung, 2011), 130.

<sup>27</sup> Aishah Abubakr, 'Rape: Fallacies of the four witness requirement', *The Express Tribune*, January 23, 2011, <https://tribune.com.pk/article/9484/rape-fallacies-of-the-four-witness-requirement#:~:text=According%20to%20the%20Hudood%20Ordinance,punishment%20of%20death%20by%20stoning>.

<sup>28</sup> Syed Muaz Shah, '1984: The murder of Pakistan's student unions', *Dawn*, Feb 9, 2015, <https://www.dawn.com/news/1162514>.



liberties'.<sup>29</sup> With the introduction of the 18<sup>th</sup> amendment (which saw further devolution of the centre's control by increasing the power of federal governments<sup>30</sup>) and the end of prolonged military rule, Pakistan's democracy appears to be headed in the right direction. However, the recurrence, as well as persistence, of democratic backsliding is not surprising if one considers the institutional and political history of Pakistan. As mentioned earlier, the inheritance of the colonial state apparatus set the stage for the empowerment of unelected institutions, and security threats from both inside and outside drove home the need for projecting control over the constituent units above all else. To this day, Pakistan's incessant security fears, whether real or imagined, run counter to the wider project of encouraging the growth and maturation of liberal democracy.<sup>31</sup> The vexing dilemma at the heart of the democratic deficit in the country has been summarised aptly thus: 'Pakistan's existence has been marked by attempts to build a nation without first building the institutional foundations that are needed to allow a stable federal entity to evolve in a democratic and pluralistic setting.'<sup>32</sup>

Moreover, cycles of military and civilian rule generated political

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<sup>29</sup> Christophe Jaffrelot, *The Pakistan Paradox* (Oxford: Oxford University Press, 2015), 199.

<sup>30</sup> Miftah Ismail, 'The importance of the 18th Amendment', *The News International*, January 23, 2019, <https://www.thenews.com.pk/print/422279-the-importance-of-the-18th-amendment>.

<sup>31</sup> *Ibid.*, 197.

<sup>32</sup> Shuja Nawaz, 'Army and Politics' in *Pakistan: Beyond the Crisis State*, edited by Maleeha Lodhi (Oxford: Oxford University Press, 2011), 82.

instability inimical to the effective functioning of political processes. Political dysfunction at the core of Pakistani democracy thus prevents liberal democracy from taking root and manifests itself, in both covert and overt ways, in the supremacy of the military over civilian institutions. Elections alone do not indicate the existence of viable political processes and institutions given that they have also been organised under military rulers. Therefore, Pakistan, despite holding elections and undergoing democratic transitions, sees its democratic development repeatedly undercut as the underlying malaise infecting the political setup is never cured.

## **The Politics of Religion: Implications for Minority Rights**

### **Historical Context**

A perceptible shift in social attitudes occurred after the country's independence. According to the 1951 census, non-Muslims comprised 14.2 per cent of Pakistan's total population, with non-Muslims making up 23.2 per cent of the in East Pakistani population.<sup>33</sup> While the prior struggle had revolved around attaining a homeland for Muslims, social and religious sentiment after independence turned towards defining who could be a legitimate citizen of the Muslim homeland. Beginning in the early 1950s, the anti-Ahmadiya<sup>34</sup> movement led to unrest and civil conflict across the country. The movement aimed to restrict public and civic space for the Ahmadiya sect through promulgation of laws and limiting their presence in governing circles.<sup>35</sup> Rulers used sentiments

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<sup>33</sup> Mukesh Rawat, 'No, Pakistan's non-Muslim population didn't decline from 23% to 3.7% as BJP claims', *India Today*, December 12, 2019, <https://www.indiatoday.in/india/story/pakistan-bangladesh-non-muslim-population-citizenship-amendment-bill-bjp-1627678-2019-12-12>.

<sup>34</sup> The Ahmadiya sect, forming around 2 to 5 million of Pakistan's population, primarily disagrees with other Muslim sects on the issue of Muhammad being the Last Prophet. See: 'Pakistan: The situation of Ahmadis, including legal status and political, education and employment rights; societal attitudes toward Ahmadis (2006–Nov. 2008)', Canada: Immigration and Refugee Board of Canada, accessed August 31, 2020, <https://www.refworld.org/docid/49913b5f2c.html>.

<sup>35</sup> Farahnaz Ispahani, 'Constitutional Issues and the Treatment of Pakistan's Religious Minorities', *Asian Affairs* 49, no. 2 (2018): 224, <https://doi.org/10.1080/03068374.2018.1468544>.

against religious minorities to introduce discriminatory legislation and quell violent unrest over measures perceived by religious hardliners as compromising the Islamic integrity of the state. From Ayub's Principles of Policy to Bhutto's Islamic Socialism to Zia's Islamisation, Islam was used by past regimes, both civilian and military, as a political instrument to gain legitimacy and consolidate power.<sup>36</sup>

Nowhere was this discrimination more apparent than in various constitutional documents. The Objectives Resolution, according to primacy to religious principles in constitutional development, was made the preamble to the 1956 constitution. The constitution also declared Pakistan an Islamic Republic, limited the offices of both the President and the Prime Minister to Muslims, and ordered laws to be crafted in conformity with Islamic injunctions.<sup>37</sup> The 1962 constitution also contained exclusionary provisions. It restricted the office of the president to Muslims, declared that no law repugnant to Islam can be enacted, formed a Council of Islamic Ideology to ensure that all laws were aligned with Islamic teachings, and regulated both the economic and social lives of citizens.<sup>38</sup> Similarly, the 1973 constitution retained Islamic provisions that undermined certain progressive clauses included in the constitution for the protection of religious minorities. It made Islam the official religion, restricted the office of President and Prime Minister to Muslims, and contained clauses that called for bringing all laws into conformity with Islam.<sup>39</sup>

Other laws introduced later further violated the fundamental

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<sup>36</sup> Rubina Saigol, *Radicalization of State and Society in Pakistan* (Islamabad: Heinrich Boell Stiftung, 2011), 7-11, <https://pk.boell.org/2011/01/20/radicalization-state-and-society-pakistan-internal-security>.

<sup>37</sup> Farahnaz Ispahani, 'Constitutional Issues and the Treatment of Pakistan's Religious Minorities.' *Asian Affairs* 49, no. 2 (2018): 225; Rubina Saigol, *Radicalization of State and Society in Pakistan* (Islamabad: Heinrich Boell Stiftung, 2011), 7-11, <https://pk.boell.org/2011/01/20/radicalization-state-and-society-pakistan-internal-security>.

<sup>38</sup> Ibid.

<sup>39</sup> Shikha Dilawri, Ahmad Salim, Humera Ishfaq and Mome Saleem, *Searching for Security: The Rising Marginalization of Religious Communities in Pakistan* (London: Minority Rights Group International, 2014), 10, <https://minorityrights.org/wp-content/uploads/old-site-downloads/mrg-searching-for-security-pakistan-report.pdf>.

rights of religious minorities. The most egregious included the passage of the second amendment, declaring members of the Ahmadiya sect as non-Muslims in response to the pressure exerted by religious parties.<sup>40</sup> The amendment defined a Muslim as someone who believes in the finality of Muhammad as a prophet, a core Muslim belief that persons belonging to the Ahmadiya sect do not follow.<sup>41</sup> Another piece of legislation with dire implications for minority rights was the constitutional amendment made under Section 295 as 295 (C) known as the Blasphemy Laws. Introduced by the military dictator, General Zia, in 1984, the Blasphemy Laws are a set of clauses, contained in the Pakistan Penal Code (1860), ostensibly designed to promote the protection of all religions in Pakistan. In reality, the law explicitly discriminates against Ahmadiyas, criminalising public expression of Ahmadiya beliefs and prohibiting Ahmadiyas from calling themselves Muslims, praying in Muslim sites of worship, and ‘propagat[ing] [their] faith’.<sup>42</sup> Ahmadiyas are victimised and criminalised for calling themselves ‘Muslims’ and are constitutionally forced to be termed, called and believed as ‘non-Muslims’ and hence minorities.

The Blasphemy Laws severely restrict critical discourse and inter-faith dialogue needed for initiating policy change, encouraging religious harmony, and fostering a culture of inclusivity by profiling religious minorities who are regularly charged under dubious claims of blasphemy. The Centre for Social Justice notes that ever since Pakistan’s conception, more than 1500 people have been targeted under the blasphemy laws with a majority belonging to religious minority groups.<sup>43</sup> Therefore, despite granting citizens the constitutional rights to freedom of assembly (Article 16),

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40 Ibid.

41 Farahnaz Ispahani, ‘Constitutional Issues and the Treatment of Pakistan’s Religious Minorities.’ *Asian Affairs* 49, no. 2 (2018):227.

42 Shikha Dilawri, Ahmad Salim, Humera Ishfaq and Mome Saleem, *Searching for Security: The Rising Marginalization of Religious Communities in Pakistan* (London: Minority Rights Group International, 2014), 10, <https://minorityrights.org/wp-content/uploads/old-site-downloads/mrg-searching-for-security-pakistan-report.pdf>.

43 Salman Masood, ‘Hindu Veterinarian Is Latest to Face Blasphemy Charges in Pakistan’, *New York Times*, May 30, 2019, <https://www.nytimes.com/2019/05/30/world/asia/pakistan-blasphemy-law.html>.

freedom of speech (Article 19), and the freedom to ‘profess, practice and propagate’ one’s religion (Article 20),<sup>44</sup> Pakistan has repeatedly failed at implementing them. Minorities are silent witnesses to violations of their constitutional rights. The blasphemy laws are used to persecute religious minorities over trivial issues and false claims. Several cases illustrate the continuation of this trend over the past year as a Hindu veterinarian was taken into custody after a local cleric accused him of blasphemy;<sup>45</sup> a Christian teenager was arrested on blasphemy charges over a cricket match;<sup>46</sup> and a mentally ill Christian man was beaten over allegations of committing blasphemy and then detained by the police.<sup>47</sup>

### **The Ahmadiya Community**

Freedom of association cannot exist without ‘the ability to seek, receive and use resources’<sup>48</sup> privy to that public space. This freedom can also refer to the right of minorities to publicly own their faith, build and participate in their respective places of worship and collectivise to demand more rights.

The state-sanctioned denial of civic rights to the Ahmadiya community is not only normative, but also legalised. The electoral law forces them to choose between their faith and their right to vote: to be eligible to practise their democratic right in choosing electoral representatives, they have to undergo the humiliation of publicly declaring themselves to be non-Muslims.<sup>49</sup> As a communi-

<sup>44</sup> Republic of Pakistan, *The Constitution of the Islamic Republic of Pakistan* (Islamabad: The National Assembly of Pakistan, 2012), [http://www.na.gov.pk/uploads/documents/1333523681\\_951.pdf](http://www.na.gov.pk/uploads/documents/1333523681_951.pdf).

<sup>45</sup> ‘Policy Update: Pakistan Blasphemy Law’, United States Commission on International Religious Freedom, accessed May 24, 2020, <https://www.uscifr.gov/sites/default/files/2019%20Pakistan%20Blasphemy.pdf>.

<sup>46</sup> Salman Masood, ‘Hindu Veterinarian Is Latest to Face Blasphemy Charges in Pakistan’, *New York Times*, May 30, 2019, <https://www.nytimes.com/2019/05/30/world/asia/pakistan-blasphemy-law.html>.

<sup>47</sup> ‘Mentally Disabled Christian Accused of Blasphemy in Pakistan’, *Persecution*, accessed May 25, 2020, <https://www.persecution.org/2019/03/13/mentally-disabled-christian-accused-blasphemy-pakistan/>.

<sup>48</sup> ‘Protecting civic space and the right to access resources’, UN Special Rapporteur, accessed on July 14, 2020, <https://www.ohchr.org/Documents/Issues/FAssociation/GeneralPrinciplesProtectingCivicSpace.pdf>.

<sup>49</sup> Human Rights Watch, ‘Pakistan: Ahmadis Kept Off Minorities Commission’, *Human Rights Watch*, July 14, 2020, <https://www.hrw.org/news/2020/05/08/>

ty, they cannot associate with their country without denying their religious identity. On May 5, 2020, Pakistan's cabinet established the National Commission for Minorities (NCM) and announced that Ahmadiya representatives will not be a part of it, arguing that they did not 'fall in the definition of minorities'.<sup>50</sup> Factually inaccurate, this decision was not opposed by any cabinet member. The Ahmadiya community, therefore, is even excluded from becoming a part of any potential body of reparation towards the discrimination they have to face on a daily basis.

Any collective freedom of religious expression is curbed by the state, prohibiting Ahmadiyas from constructing mosques, or to refer to their places of worship as mosques. Their mosques have regularly come under attack. In 2010, two Ahmadiya mosques in Lahore were simultaneously attacked in an organised attempt by militant Sunni groups, who gunned down over 80 Ahmadiyas in an act of entitled terror.<sup>51</sup> In November 2015, a mob broke through a police cordon established to protect an Ahmadiya place of worship after escalating religious tensions in Jhelum and set it on fire.<sup>52</sup> In October 2019, the assistant commissioner of Hasilpur, along with workers of Baldia town, attacked the 70-year-old Ahmadiya place of worship in Bahawalpur, and destroyed parts of the building. The police and government officials spearheading this attack have not been held accountable.<sup>53</sup>

According to the Annual Security Report 2019 by the Centre for Research and Security Studies, in 2019 alone 28 Shias and two Ahmadiyas were killed in targeted attacks due to their faith.<sup>54</sup> Another 57 Shias and one Christian were injured that year. The current research showed that there have been at least five attacks on Ahmadiya places of worship since August 2018, two on Hindu temples, and one on a Christian church. There have also been 13

[pakistan-ahmadis-kept-minorities-commission.](#)

<sup>50</sup> Ibid.

<sup>51</sup> *Minorities under attack: Faith-based discrimination and violence in Pakistan*, RefWorld, accessed May 25, 2020, <https://www.refworld.org/pdfid/57fb91e54.pdf>.

<sup>52</sup> Ibid.

<sup>53</sup> Ibid.

<sup>54</sup> Centre for Research and Security Studies, 'Annual Security Report—2019', *Centre for Research and Security Studies*, December 30, 2019, <https://crss.pk/story/31-reduction-in-terrorism-in-2019-improving-security-situation-reports-crss>.

blasphemy cases filed against Ahmadiyas, nine against Christians, two against Hindus, and one against a Shia in the same time period.<sup>55</sup> The fear for their lives acts as an active hindrance in the minorities' ownership of any civic outlet; the growing intolerance and normalisation of discrimination towards them is coupled by the state's complicity in the status quo. When Prime Minister Imran Khan appointed Atif Mian, a graduate of Princeton University who also happens to be an Ahmadiya, to his advisory economic council in September 2018, he had to eventually succumb to pressure and remove him from his post. Two members of the advisory council had resigned in protest of the appointment.<sup>56</sup>

### **The Christian Community**

Courting extremist groups has institutionalised a culture of intolerance and strengthened illiberal democracy in Pakistan. Public protest is not an outlet available to religious minorities, as most fear violence and retaliation by extremists. Religious parties often dictate policy by forcing the government to overturn progressive decisions. The lack of justice for religiously motivated crimes against minorities creates a culture in which civic participation is dangerous to their lives. For instance, Asia Bibi, a Christian farm labourer, was convicted of blasphemy in June 2009 in what became Pakistan's most notorious blasphemy case.<sup>57</sup> She spent nine years on death row, before being acquitted in October 2018, but the fundamentalist controversy created by her arrest is indicative of Pakistani behaviour and attitudes towards the Christian community. Even members of dominant religious groups have been killed when found to have supported minorities. Salman Taseer's murder is a representative example, where despite the privilege of being the Governor of Punjab, supporting Asia Bibi's acquittal in 2011 resulted in him being killed by his

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<sup>55</sup> Ibid.

<sup>56</sup> Fahad Chaudhry, 'Under Pressure Govt Backtracks on Atif Mian's Appointment; Removes Economist from Advisory Council', *Dawn*, September 8, 2018, <https://www.dawn.com/news/1431495>.

<sup>57</sup> Shumaila Jaffery, 'Asia Bibi: Pakistan's Notorious Case', *BBC*, February 01, 2019, [https://www.bbc.co.uk/news/resources/idt-sh/Asia\\_Bibi](https://www.bbc.co.uk/news/resources/idt-sh/Asia_Bibi).

own bodyguard.<sup>58</sup> Government efforts to placate enraged mobs further encourage hardliners who realise that they can operate with impunity.<sup>59</sup> After Asia Bibi's acquittal by the Supreme Court in 2018, the Tehreek-e-Labbaik (TLP) party held violent protests to demand her death. The government showed signs of yielding to the protestors, although it later responded with a crackdown.<sup>60</sup> Despite the outrage, the court upheld its decision,<sup>61</sup> which was a small victory for human rights in the country. Such glaringly few positive precedents have not successfully abated the culture of fear amongst minorities, which integrally shapes their relationship with each other as a community, and with all public and semi-public spaces.

The right to associate, assemble and express is also hindered by the clampdown on churches. Christians cannot effectively gather and pray because of the increasing opposition to the existence of churches in non-metropolitan areas. One such case is the closing down of a church constructed in a village in Toba Tek Singh district in 2016.<sup>62</sup> According to the Human Rights Commission of Pakistan's (HRCP) fact-finding mission, several local Muslims filed a suit against the church, and despite pressure from prominent local Christian leaders, the authorities asked for the church premises to be sealed. The Muslim communities' assurances to reallocate the church never materialised. The situation carried on for years and had even escalated to warning shots fired in the air by the different communities.<sup>63</sup>

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<sup>58</sup> 'Explaining the Salman Taseer Murder', Council on Foreign Relations, accessed August 31, 2020, <https://www.cfr.org/expert-brief/explaining-salman-taseer-murder>.

<sup>59</sup> Ibid.

<sup>60</sup> Sher Ali Khalti, 'Over 1,000 Held During Crackdown on TLP', *The News*, November 25, 2018, <https://www.thenews.com.pk/print/397828-over-1-000-held-during-crackdown-on-ttp>.

<sup>61</sup> Harriet Sherwood, 'Asia Bibi: Pakistan's Top Court Upholds Blasphemy Acquittal', *The Guardian*, January 29, 2019, <https://www.theguardian.com/world/2019/jan/29/asia-bibi-pakistans-top-court-upholds-blasphemy-acquittal>.

<sup>62</sup> "Access Denied": Why are Minorities' Sites of Worship Being Closed? Human Rights Commission of Pakistan, accessed August 31, 2020. <http://hrcp-web.org/hrcpweb/access-denied-why-are-minorities-sites-of-worship-being-closed>.

<sup>63</sup> Ibid.

While talking with individuals from the Shanti Nagar Church in Multan, the HRCP's fact-finding mission discovered that various Christian students were under undue verbal duress from Muslim students or instructors to give up their religion. A Christian student, Safia Williams, narrated a personal account where, during her college years in Khanewal in 2012, her peers would lecture her to convert to Islam to become more 'righteous'.<sup>64</sup> Safia expressed being existentially confused about whether her entry to heaven is premised on accepting Islam.<sup>65</sup> Hence, morality has been weaponised to hinder minorities' association with their religion in shared spaces, transforming their relationship with their identity to an uncomfortable territory which actively prohibits freedom of expression.

The HRCP's fact-finding mission in 2019 also investigated forced conversions in districts populated by minorities. In Bahawalpur, there were 12 instances of forced marriages premised on forced conversions. An individual from the neighbourhood told the mission that in Chak 104-D village, in December 2018, Emanuel Masih's 13-year-old daughter had to wed into a Muslim family and was converted to Islam.<sup>66</sup> The episode was brought to the notification of the Federal Minister for Human Rights, Shireen Mazari, but no action was taken. Such reaching out to prominent individuals within the government is usually unsuccessful since there is no external pressure ensuring accountability. In another family in Chak 104-D, four sisters were forced into marriage with young Muslim men and attempts to intervene were not successful since the Christian community did not have enough social capital to organise any protest.<sup>67</sup> Social media storms by activists and progressive individuals are not created in every case. Even when there is considerable dissent on alternative media, the normalisation of forced conversions is one of the reasons why the pressure does not usually translate into satisfactory or mediatory action. There had also been an instance of a female Muslim marrying a Christian

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64 Ibid.

65 Ibid.

66 Ibid.

67 Ibid.

male and the boy being pressured to convert, proving that this discrimination goes beyond entrenched misogynistic patterns.<sup>68</sup> Tragically, the boy was later killed. No justice has yet been dispensed. Therefore, the Christian community doesn't have viable outlets to collectivise and their right to assembly is cordoned off.<sup>69</sup>

### **The Shia Community**

Like the Ahmadiyas, the minority sect of Shia Muslims also remains targets of religious extremism in Pakistan.<sup>70</sup> With Saudi influence and increased funding to fundamentalist seminaries, the rise in sectarianism in the country was propelled in the 1980s with the formation of Sunni militant organisations, like the Lashkar-i-Jhangvi and the Ahl-e-Sunnat Wal Jama'at (ASWJ), with an increasing emphasis on jihad and therefore an increase in translating the prejudice into aggressive and collective discriminatory practices. Moreover, the Islamisation policies followed by Zia ul Haq empowered Sunni religious parties such as the Jamiat-ul-Islam (JUI) that wanted to enforce their interpretation of Islam and influence state policy.<sup>71</sup> These religious parties have also been courted by later governments, out of political convenience. The combination of these factors has led to a campaign of systematic violence against the Shia community that has seen its sites of worship and congregations attacked through bombings by militants.<sup>72</sup>

International human rights observers have noted that the Shia Hazara community of Pakistan has faced the worst violence at the hands of militants, and a 2018 report by the National Commission

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<sup>68</sup> Ibid.

<sup>69</sup> Ibid.

<sup>70</sup> Farahnaz Ispahani, 'Constitutional Issues and the Treatment of Pakistan's Religious Minorities.' *Asian Affairs* 49, no. 2 (2018): 224, <https://doi.org/10.1080/03068374.2018.1468544>.

<sup>71</sup> Suba Chandran, *Sectarian Violence in Pakistan* (Institute of Peace and Conflict Studies: New Delhi, 2003), 2, <https://www.jstor.org/stable/resrep09180>.

<sup>72</sup> Shikha Dilawri, Ahmad Salim, Humera Ishfaq and Mome Saleem, *Searching for Security: The Rising Marginalization of Religious Communities in Pakistan* (London: Minority Rights Group International, 2014), 8, <https://minorityrights.org/wp-content/uploads/old-site-downloads/mrg-searching-for-security-pakistan-report.pdf>.

for Human Rights Pakistan noted that more than 2,000 Hazaras have been killed in the past 14 years in Pakistan.<sup>73</sup> In April 2019, at least 24 Shia Hazaras were killed in a suicide attack in a vegetable market in Quetta. According to one report, at least 509 Shia Hazaras have been killed since 2012.<sup>74</sup> In July 2014, a group of around 300 Shia Hazara pilgrims were attacked by gunmen while travelling through the Balochistan province on their way to Iran for pilgrimage, of them 26 were killed.<sup>75</sup>

### **The Hindu Community**

Violence is also perpetuated against vulnerable members of the Hindu community. Hindu girls in Sindh, often underage, are abducted by Muslim men, coerced to convert to Islam, and marry their abductors.<sup>76</sup> In the process, they face both physical and psychological violence and are forced to cut ties with their families.<sup>77</sup> Most of these girls belong to families of bonded labourers working for landlords on agricultural land.<sup>78</sup> Although marriage under the age of 18 is prohibited by law in Sindh, abductors either use Sharia law to sanctify the marriage and bypass provincial minimum age requirements or have the marriage take place in Punjab where the minimum age of marriage is lower. A bill seeking to criminalise forced conversions of minors did not get approval in the Sindh legislature due to outrage from the religious parties.<sup>79</sup>

Hindu girls who have been forced into such marriages rarely get justice and the perpetrators of the crime go unpunished due

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<sup>73</sup> National Commission for Human Rights Pakistan, *Understanding the Agonies of Ethnic Hazaras* (Islamabad: National Commission for Human Rights, 2018), 5.

<sup>74</sup> Human Rights Watch, 'We are the Walking Dead', *Human Rights Watch*, June 16, 2015, <https://www.hrw.org/report/2014/06/29/we-are-walking-dead/killings-shia-hazara-balochistan-pakistan>.

<sup>75</sup> BBC, 'Pakistani Shia Pilgrims Killed in Gun Attack on Bus', *BBC*, September 20, 2011. <https://www.bbc.com/news/world-south-asia-14992220>.

<sup>76</sup> Reuben Ackerman, *Forced Conversions & Forced Marriages In Sindh, Pakistan* (Birmingham: CIfORB, 2018).

<sup>77</sup> Ibid.

<sup>78</sup> Ibid.

<sup>79</sup> KK Shahid, 'Forced conversions continue unabated in Sindh', *Pakistan Today*, December 19, 2019, <https://www.pakistantoday.com.pk/2019/12/19/forced-conversions-continue-unabated-in-sindh>.

to strong political influence of religious lobbyists and networks whose leaders are also members of parliament and include influential clerics.<sup>80</sup> A bill was presented as a private member's bill by an opposition party member seeking to raise the minimum age of marriage to 18 years in Punjab, but it never moved for discussion and deliberation in the parliament.<sup>81</sup>

The 2020 fact-finding mission also found that a Hindu temple near the Government Sandeman High School for Boys in Quetta being re-built into a science laboratory without consent from the local Hindu community. The temple has been shut for a long time and the local Hindu community had been banned from using the temple for any religious or non-religious purpose. The Hindu community was too scared to even anonymously report details to the HRCMP mission, fearing backlash.<sup>82</sup> The HRCMP also visited the Government Primary School in Zhob, which had also been built on the site of a Hindu temple during the 1980s.<sup>83</sup> The Hindu community had been barred from visiting the site since and the number of Hindu inhabitants in Zhob has been gradually decreasing over the years, with relatively few Hindu families left in the region.<sup>84</sup> There was no significant opposition from the neighbourhood Hindu network when the temple was changed into a school as a result of this historical and dialectical suppression of their civic freedoms. Hence, it becomes clear that the Hindu community was forced to migrate and displace themselves for protection, and into cutting off any association with their land in order to secure an average lifestyle for themselves and their families. The choices that minority faiths have to make further marginalise any possibility of attaining any civic liberty.<sup>85</sup> Local representatives of the areas agreed to talk to the HRCMP team only on the condition of

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<sup>80</sup> Reuben Ackerman, *Forced Conversions & Forced Marriages In Sindh, Pakistan* (Birmingham: CIFO RB, 2018).

<sup>81</sup> Amir Wasim, 'Bill against Child Marriage Divides Parties in NA', *Dawn*, May 3, 2019, <https://www.dawn.com/news/1479444>.

<sup>82</sup> "Access Denied": Why are Minorities' Sites of Worship Being Closed? Human Rights Commission of Pakistan, accessed August 31, 2020, <http://hrmp-web.org/hrmpweb/access-denied-why-are-minorities-sites-of-worship-being-closed>.

<sup>83</sup> Ibid.

<sup>84</sup> Ibid.

<sup>85</sup> Ibid.

anonymity, implying the extent to which participation in external efforts to record and validate the oppression is also restricted. The representatives elaborated on how these conditions mirrored the treatment of Hindu minorities in the rest of Balochistan.<sup>86</sup>

A considerable section of the Hindu community inside Sindh are the so-called untouchables, or Dalits.<sup>87</sup> This group makes up a significant portion of bonded labour in Sindh, where there is a lot of reliance on the strenuous and exhausting work of bonded labour in growing cash crops such as sugar cane. The landowners ensure that the bonded workers stay ignorant and unfit in any capacity to challenge the institutionalised abuse and unfair practices.<sup>88</sup> The National Assembly of Pakistan prohibited bonded labour through the Bonded Labour Abolition Act 1992. But these practices go unchecked in numerous areas of Sindh and authorities remain hesitant to intervene since they cannot afford retributive action by the powerful ruling families.<sup>89</sup> Hindus who do manage to escape bonded labour still cannot access communal support. Existing prejudice, informal apartheid and discrimination guarantee that their professional possibilities are restricted to jobs as sweepers.<sup>90</sup>

Recent reports also illustrate an increase in harassment of Hindu women, as seen by the case of the rape of six-year-old Vijanti Meghwar on 4 December 2012 in Ghulam Nabi Shah town, in the Sindh region of Pakistan.<sup>91</sup> In a study directed by Chander Kumar Kohli, the Vice President of the Pakistan Hindu Seva from 2011 to 2012, Dalits are hesitant to let their young girls attend primary school since they are at risk of abduction and subsequent forced religious conversion.<sup>92</sup> Therefore, women within minority groups

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<sup>86</sup> Ibid.

<sup>87</sup> Ibid.

<sup>88</sup> Ibid.

<sup>89</sup> Ibid.

<sup>90</sup> 'Hindus', World Directory of Minorities and Indigenous Peoples, accessed July 15, 2020, <https://minorityrights.org/minorities/hindus-2>.

<sup>91</sup> 'Persecution and Discrimination of Hindus in Pakistan', Freedom of Religion or Belief, accessed July 15, 2020, <https://appgfreedomofreligionorbelief.org/media/Pakistan-Hindu-brief.pdf>.

<sup>92</sup> The Express Tribune, 'Why Pakistani Hindus leave their homes for India', *The Express Tribune*, October 29, 2015, <https://tribune.com.pk/story/981257/why-pakistani-muslims-fled-pakistan-for-india>.

are additionally marginalised since the intersectional nature of their oppression further prevents them from interacting with the society. Member of Parliament Haresh Chopra said these episodes were increasing, and that there are organised factions of *mullahs*<sup>93</sup> (who mobilise locals to participate and support this abuse) and terrorists who kidnap minor young women of minority faiths and fake their age certificates with Muslim names from madrassas.<sup>94</sup>

### **The Politics of Security: Implications for Human Rights Activism**

The decline of civil liberties in Pakistan cannot be studied without examining the role of the military. A hostile geopolitical environment, a legacy of institutional imbalance, and repeated attempts to consolidate their authoritarian influence over the masses have contributed to military interference in national politics. Political parties are forced to seek military approval as a means of gaining power and then maintaining it. The discernible obstruction of civic space before the 2018 election, including removal of the central opposition figure and extensive media censorship over election coverage, give observers enough reason to suspect a close relationship between Prime Minister Imran Khan and the army.<sup>95</sup> Many speculate that the military rules indirectly through Khan, who lacks any real political power of his own despite contesting and winning the 2018 national election on a populist platform.

### **Civil Society Organisations**

With the military overlooking governance, politics and policy, especially national security and foreign affairs, there is constant surveillance of civil society. Perceiving CSOs as threats to stability and security, the establishment obstructs their activities in the

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<sup>93</sup> *Mullahs* refers to local religious leaders, learned in Islamic theology and shariah law.

<sup>94</sup> 'Persecution and Discrimination of Hindus in Pakistan', Freedom of Religion or Belief, accessed July 15, 2020, <https://appgfreedomofreligionorbelief.org/media/Pakistan-Hindu-brief.pdf>.

<sup>95</sup> Madiha Azfal, *An Inflection Point for Pakistan's Democracy* (Washington, DC: The Brookings Institution, 2019).

name of ‘national interest’. NGOs and INGOs are subject to extensive regulation involving multiple, lengthy procedures of registration, security clearance, and approvals for funding.<sup>96</sup> The entire process is characterised by an absence of transparency and limited civilian oversight, resulting in arbitrary rejections of NGO applications. Just last year, the Economic Affairs Division (EAD) rejected 42 such requests for registration.<sup>97</sup> The EAD is a new wing assigned the responsibility to register and give clearance to NGOs and INGOs to operate in the country even though all NGOs were previously registered with the mandated authorities under the Societies Act 1860 such as the Pakistan Centre for Philanthropy (PCP) or the Securities Exchange Commission of Pakistan (SECP). The new registration directs several arms of the state to investigate and scrutinise the personal details of individuals and staff members engaged in an NGO and those who run it as well as all operational and financial details.<sup>98</sup> The jurisdictions drawn by the EAD, through an updated set of additional regulations, requires organisations to sign memoranda of understanding as permission to implement particular projects or programmes. The regulations either include certain no-go areas of the country such as the Balochistan province. Regardless, there are serious inconsistencies within the regulations and some organisations are registered despite the mentioned jurisdictions.

### **Activism**

Aurat March 2020, an annual women empowerment rally on 8 March, came under attack in Islamabad as men who reportedly belonged to the Jamiat Ulema-e Islam—Fazl (JUI-F) and Lal Masjid hit the marchers with sticks and stones. Some of the marchers pointed out that the state did not provide the required protection

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<sup>96</sup> Nadia Naviwala, ‘Pakistan uses regulations to tighten grip on INGOs’, *Devex*, October 18, 2017, <https://www.devex.com/news/pakistan-uses-regulations-to-tighten-grip-on-ingos-91003>.

<sup>97</sup> Dawn, ‘Civil society condemns state clampdown on NGOs’, *Dawn*, February 17, 2019, <https://www.dawn.com/news/1464273>.

<sup>98</sup> ‘EAD has nothing to do with registration of NGOs’, *Profit of Pakistan Today*, March 1, 2019, <https://profit.pakistantoday.com.pk/2019/03/01/ead-has-nothing-to-do-with-registration-of-ngos/>.

or take urgent action during the attacks, implying its collusion with the patriarchal mindset enabling this attack.<sup>99</sup>

The notorious sedition law, Section 124A of the Pakistan Penal Code, is frequently deployed to arrest and incarcerate those demanding social and political reforms. In December 2019, the police registered sedition cases against the participants and organisers of the Students Solidarity March, a peaceful assembly of students across 50 cities in Pakistan.<sup>100</sup> A similar charge was brought in February 2019 against the Progressive Youth Alliance leader, Rawal Asad.<sup>101</sup> The Pashtun Tahafuz Movement, a nonviolent organic social movement for Pashtun human rights, has been demanding an end to enforced disappearances and militarisation of Khyber Pakhtunkhwa and Balochistan.<sup>102</sup> Ever since their rise to prominence in 2018, the members of this movement have been under constant surveillance by the military, their protests have been attacked, and several members kidnapped by the intelligence unit.<sup>103</sup> In January 2020, the police arrested the leader of the pro-reform Pashtun Tahafuz Movement (PTM), Manzoor Pashteen, on sedition charges.<sup>104</sup> Several activists of the left-leaning Awami Workers Party (AWP) were also arrested under sedition charges for protesting against Pashteen's arrest.<sup>105</sup>

<sup>99</sup> Pakistan Today, 'Aurat March Attacked with Bricks, Sticks in Islamabad', *Pakistan Today*, March 9, 2020, <https://www.pakistantoday.com.pk/2020/03/08/religious-party-attacks-aurat-march-in-capital-several-injured>.

<sup>100</sup> Imran Gabol, 'Sedition Cases Registered Against Organisers and Participants of Student March', *Dawn*, December 2, 2019, <https://www.dawn.com/news/1519976>.

<sup>101</sup> Ibid.

<sup>102</sup> Ali Wazir, 'What Does the Pashtun Tahafuz Movement Want?', *The Diplomat*, April 27, 2018, <https://thediplomat.com/2018/04/what-does-the-pashtun-tahafuz-movement-want/>.

<sup>103</sup> Madiha Afzal, 'Why Is Pakistan's Military Repressing a Huge, Nonviolent Pashtun Protest Movement?' *Brookings*, February 7, 2020, <https://www.brookings.edu/blog/order-from-chaos/2020/02/07/why-is-pakistans-military-repressing-a-huge-nonviolent-pashtun-protest-movement/>.

<sup>104</sup> Ellis-Petersen, Hannah and Shah Meer Baloch, 'Civil Rights Activist Arrested in Pakistan on Sedition Charges', *The Guardian*, January 27, 2020, <https://www.theguardian.com/world/2020/jan/27/civil-rights-activist-manzoor-ahmad-pashteen-arrested-in-pakistan-on-sedition-charges>.

<sup>105</sup> Ammar Ali Jan, 'It is Time for India and Pakistan to Repeal Their Sedition Laws', *Al Jazeera*, February 20, 2020, <https://www.aljazeera.com/indepth/opinion/time-india-pakistan-repeal-sedition-laws-200220084422316.html>.

Baloch rights activists are not exempt from the notorious illegal framework, systematic blatant use of undue force and breach of the authorised dominion of the state. Various human rights organisations have reported forced disappearances and killings of Baloch persons by Pakistani security forces under the state policy known as 'kill and dump'.<sup>106</sup> Rape, harassment and extra-judicial killings remain mostly unreported. According to the Human Rights Council of Balochistan, 371 people have been disappeared and at least 158 killed by Pakistani security forces in the first six months of 2019 alone.<sup>107</sup>

Amnesty International corroborates this information, noting that since 2011, hundreds of Baloch people have been disappeared only to be killed by Pakistani security forces.<sup>108</sup> As of March 2019, Pakistan's Commission of Inquiry on Enforced Disappearances, a state-run agency, had over 2,000 unresolved cases of enforced disappearances.<sup>109</sup> The sister of Imam Ishaq, another missing person, committed suicide after protesting against the disappearance of her brother which gained public attention through a short video of her protest which was increasingly circulated through social media.<sup>110</sup>

A Pakistani human rights activist and feminist worker, Gulalai Ismail, fled to the United States, after being chased, harassed, interrogated, investigated and charged with terrorism, defamation and sedition, after she openly expressed her solidarity with the PTM in Khyber Pakhtunkhwa.<sup>111</sup> Her father faced similar threats

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<sup>106</sup> Human Rights Watch, 'We Can Torture, Kill, or Keep You for Years', *Human Rights Watch*, July 28, 2011, <https://www.hrw.org/report/2011/07/28/we-can-torture-kill-or-keep-you-years/enforced-disappearances-pakistan-security>.

<sup>107</sup> Hari Prasad and Aman Madan, 'Detained, tortured, and murdered in Pakistan: Balochistan's lost generation', *The New Arab*, August 16, 2019, <https://english.alaraby.co.uk/english/indepth/2019/8/16/detained-tortured-and-murdered-pakistan-lost-generation-of-balochis>.

<sup>108</sup> 'Balochistan: Hundreds of Baloch Rights Activists Detained, Tortured and Murdered as Part of the State's Kill and Dump Policy', Unrepresented Nations and Peoples Organisation, accessed July 14, 2020, <https://unpo.org/article/21644>.

<sup>109</sup> Ibid.

<sup>110</sup> BWNews, 'Balochistan: Brother's disappearance, despaired sister commits suicide', *BWNews*, June 15, 2020, <https://balochwarn.com/2020/06/15/balochistan-despaired-sister-commits-suicide>.

<sup>111</sup> Jeffrey Gettleman, 'Gulalai Ismail, Feminist Hunted by Pakistan's Authorities, Escapes to U.S.', *The New York Times*, September 19, 2019, <https://www.nytimes.com/2019/09/19/world/asia/gulalai-ismail-pakistan-activist.html>.

after she escaped, and was arrested for allegedly ‘spreading hate against the state’, kept in custody for 14 days, and her passport and documents were taken away.<sup>112</sup>

Jalila Haider, a Baloch women’s rights activist was detained at the Lahore airport by the Federal Investigation Agency (FIA) for seven hours while travelling to a conference in London. The agency reportedly detained her because her name was on a category B watchlist for ‘anti-state activities’, and therefore labelling her as a terrorist who was a security threat to Pakistan. Her passport was taken away and returned only after she had missed her flight.<sup>113</sup> Human rights activists and civil society workers are being increasingly questioned at airports about their international travels and participation at international conferences and their reasons for doing so.<sup>114</sup>

### **Media**

Journalists, writers and human rights activists who advocate for the rights of minorities, or even simply talk about free speech and give an impression of a liberal Pakistan are increasingly being silenced. Media outlets, small and large, as well as independent writers have experienced growing backlash, harassment, intimidation and criminalisation.<sup>115</sup> Sajid Hussain Baloch, a Pakistani Baloch journalist, was found dead in Sweden in May after he had gone missing in March.<sup>116</sup> There is sufficient information to suggest that

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<sup>112</sup> Ibid.

<sup>113</sup> Imran Gabol, ‘Activist Jalila Haider released after being held by FIA for 7 hours at Lahore Airport’, *Dawn*, January 20, 2020, from <https://www.dawn.com/news/1529491>.

<sup>114</sup> ‘Pakistan: Airport security screening procedures for passengers departing on international flights, including whether authorities verify if a passenger is wanted by the police (2015-December 2017)’, *Canada: Immigration and Refugee Board of Canada*, January 15, 2018, <https://www.refworld.org/docid/5aa8d7547.html>.

<sup>115</sup> Hannah Ellis-Petersen and Shah Meer Baloch, ‘“Extreme Fear and Self-Censorship”: Media Freedom under Threat in Pakistan.’, *The Guardian*, November 5, 2019, <https://www.theguardian.com/world/2019/nov/05/extreme-fear-and-self-censorship-media-in-pakistan-under-attack>.

<sup>116</sup> DW, ‘Sajid Hussain Baloch: Missing Pakistani journalist found dead in Sweden’, *DW*, May 2, 2020, <https://www.dw.com/en/sajid-hussain-baloch-missing-pakistani-journalist-found-dead-in-sweden/a-53308039>.

Pakistani intelligence agencies may have abducted him and also killed him, as he had fled from Pakistan to seek refuge in Sweden after receiving threats for his journalism on the separatist conflict in Balochistan.<sup>117</sup>

In a rare testimony in August 2020, two dozen female Pakistani journalists complained that they have encountered ‘coordinated’ vicious social media campaigns to harass, discredit and intimidate them for their work.<sup>118</sup> Some of them alleged that Twitter accounts affiliated with the ruling Pakistan Tehreek-e-Insaf (PTI) Party and right-wing elements in the society were behind the ‘organised’ attacks. Several of the witnesses described the explicit nature of the sexual abuse they faced, including social media trolls calling them ‘prostitutes’ or ‘whores’ and threatening them with rape or death.<sup>119</sup>

### **Academics**

Junaid Hafeez, a university professor, was sentenced to death on charges of blasphemy in Multan in 2019 after being accused in 2013 and spending the intervening years in solitary confinement.<sup>120</sup> Shagufta Masih, who shared the same cell for a while with Asia Bibi, was accused along with her husband, of blasphemy. The case now stands adjourned for an ‘indefinitive’ period.<sup>121</sup>

University professors known to teach with an open mind and who are progressively inclined have faced intimidation from students as well as conservative administration and faculty members. Recently, Pervaiz Hoodbhoy, a renowned Pakistani nuclear physicist, was dismissed by the Formal Christian College in Lahore as his views

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117 Ibid.

118 Ayaz Gul, ‘In Rare Testimony, Female Pakistani Journalists Describe Social Media Attacks to Lawmakers’, *Voice of America*, August 18, 2020, <https://www.voanews.com/press-freedom/rare-testimony-female-pakistani-journalists-describe-social-media-attacks-lawmakers>.

119 Ibid.

120 Asad Hashim, ‘Pakistani academic Junaid Hafeez sentenced to death for blasphemy’, *Aljazeera*, December 21, 2019, <https://www.aljazeera.com/news/2019/12/pakistani-academic-junaid-hafeez-sentenced-death-blasphemy-191221091139428.html>.

121 Asif Aqueel, ‘Asia Bibi’s Cell Now Holds Another Christian Woman on Death Row for Blasphemy’, *Christianity Today*, July 30, 2019, <https://www.christianitytoday.com/news/2019/may/asia-bibi-lawyer-malook-shagufta-shafqat-blasphemy-pakistan.html>.

were openly known as being critical of the government policies; he also lectured on logic and progressive thought and reasoning.<sup>122</sup> Similarly, Ammar Ali Jaan, a well-known rights activist, was dismissed by the Formal Christian College, after having been previously removed from Punjab University for his political views, following his protest against the killing of Arman Loni, a senior leader of the Pashtun Tahafuz Movement, and being ‘needlessly vocal’ on minorities rights, the PTM and women’s activism.<sup>123</sup>

Lawyers who work as human rights activists, especially those defending blasphemy-related cases against minorities, and lawyers who are themselves minorities, continue to face threats for the work they do. According to the Frontline Defenders, some 371 human rights defenders are at risk in Pakistan.<sup>124</sup> The case of the lawyer Saif ul Mulook, who defended Asia Bibi, is also worth noting as he continues to face considerable threats to his public life as he defends another Christian couple’s case.<sup>125</sup>

## **Conclusion**

The state of security and freedom of expression remains one of deep concern in Pakistan. The shrinking space for civil society indicates the heightened threats to Pakistani human rights defenders and free thinkers. They have been victims of enforced disappearances, illegal detention and, in some instances, murder as well. Pakistani civil society groups increasingly feel the systematic elements of coercion, which operate through covert state practices. The voice of civil society is suppressed and unheard. Even the voices which get a hearing are not entertained seriously or get access to

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<sup>122</sup> The Express Tribune, ‘Hoodbhoy resigns from FC College after administration terms contract “non-renewable”’, *The Express Tribune*, July 03, 2020, <https://tribune.com.pk/story/2253195/hoodbhoy-resigns-from-fc-college-after-administration-terms-contract-non-renewable>.

<sup>123</sup> ‘FC College Forces Ammar Ali Jan To Step Down As Faculty Member’, *NayaDaur*, June 20, 2020, <https://nayadaur.tv/2020/06/fc-college-forces-ammar-ali-jan-to-step-down-as-faculty-member/>.

<sup>124</sup> ‘#Pakistan’, Frontline Defenders, accessed July 14, 2020, <https://www.frontlinedefenders.org/en/location/pakistan>.

<sup>125</sup> New Internationalist, ‘The Pakistani lawyer putting his life on the line’, *New Internationalist*, June 12, 2019, <https://newint.org/features/2019/06/12/pakistani-lawyer-putting-his-life-line>.

justice. Democratic in its constitution, the rights of the citizens are inalienable in Pakistan. Yet, minorities continue to be coerced through ‘silent discrimination’ such as the growing phenomenon of forced conversions.

### **Recommendations**

- i. The government of Pakistan must stop invasive attacks on the public lives of citizens through regressive laws that restrict civil liberties.
- ii. Laws should remain in line with Pakistan’s international commitments through the UN Conventions, EU conventions, as well as agreements on human rights with GSP (Generalised Scheme of Preferences) + and FATF (Financial Action Task Force).
- iii. The government must impede undue space given to undemocratic institutions to reform, coerce, or manipulate laws, systems and procedures and the space of citizens.
- iv. The government must adhere to the Articles on the Freedom of Association as mentioned in the Constitution and disallow interference of undemocratic institutions in unwarranted arrests, torture, abductions and intimidation.
- v. Political parties in Pakistan are recommended to transform as modern political parties and institute a culture of participatory politics.
- vi. Democratic parties should evolve by identifying the lack of political parties that have not been organised around patronage politics and feudal relationships.
- vii. Consultations should be held with civil society regarding interference by state apparatus against organisations without taking in confidence NGOs, INGOs and parliament, yet civil society is struggling on account of shrinking civic space and stringent regulations imposed on civil society including media, NGOs, and INGOs.
- viii. The government must enact existing laws against hate speech and sectarian violence, especially with regards to the rising sectarian Shia-Sunni conflict in the country and the persecuted Ahmadiya population.

- ix. The government must, at least, enact sections of the Pakistan Penal code against the unlawful conversion of citizens to Islam.
- x. The government must move towards integrated systems, institutions and departments that make enforcement mechanisms mandatory to uphold constitutional values of civil liberties instead of enacting and legislating regressive laws which defy these values.

## Annex

### Assessment of Civic Space in Pakistan: Survey Findings

An online survey was conducted with 25 renowned human rights defenders on how civic space has fared in Pakistan since the Pakistan Tehreek Insaaf (PTI) came to power in 2018. Of them, substantial majorities strongly disagree with the statement that sexual minorities are able to practise their civil liberties in Pakistan; that men and women are able to enjoy equal access to civil liberties; that the poor and the rich have equal access to civil liberties; or that all different social groups, regardless of ethnicity, language, etc, are able to access civil liberties.

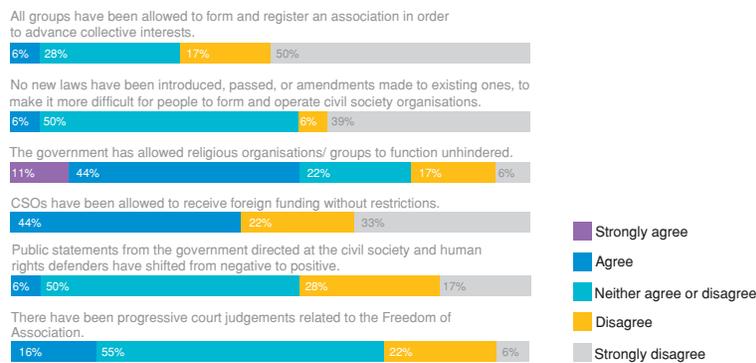


Figure 1: Evaluating the Perception of Access to Civic Space Reflected in the Law, and for Different Groups According to Human Rights Defenders

Half the respondents strongly disagree with the statement that all groups have been allowed to register an association in order to advance their collective interests. There is blatant discrimination in the nature of rights that CSOs are allowed to advocate for. A total of 89 per cent of the respondents believe that no new laws have been passed to make the operation of CSOs more difficult, with 50 percent disagreeing and around 39 percent strongly disagreeing with the statement.

*Closing Civic Space in Pakistan*

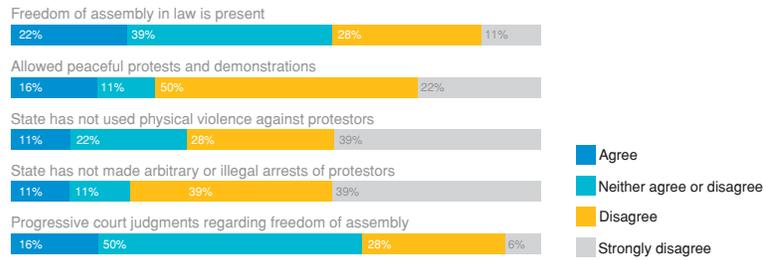


Figure 2: Percentage of Human Right Defenders Who Believe in the Accessibility of Freedom of Association for All Groups in Pakistan

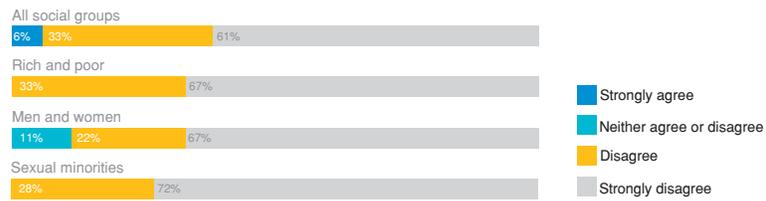


Figure 3: Percentage of Respondents' Agreement or Disagreement With Statements About Freedom of Assembly

# Sri Lanka: Minority Rights within Shrinking Civic Space

Ambika Satkunanathan

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## Introduction

This report will discuss the state of the rights of ethno-religious minorities in Sri Lanka in the context of the erosion of civic space.<sup>1</sup>

Historically, minorities in Sri Lanka have faced discrimination, marginalisation, and violence, which worsened during periods when the space for dissent and civil society activism was also under attack by the government of the day. During President Mahinda Rajapaksa's regime from 2004 to 2015, in the midst of shrinking of civic space and crackdown on dissent, ethno-religious minorities faced numerous threats and obstacles to exercising their rights. Although this changed in January 2015 when the Yahapalanaya<sup>2</sup> regime, led by President Maithripala Sirisena, was elected, civic space began shrinking again during the latter stages of the of the Yahapalanaya regime. Concerns about potential further restrictions on civic space increased when the Rajapaksa family returned to power in November 2019 with the election of Gotabaya Rajapaksa, the brother of former President Mahinda Rajapaksa, as the president.

To contextualise the state of minority rights and illustrate the

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<sup>1</sup> 'Civic space is the environment that enables civil society to play a role in the political, economic and social life of our societies. In particular, civic space allows individuals and groups to contribute to policy-making that affects their lives, including by: accessing information, engaging in dialogue, expressing dissent or disagreement, and joining together to express their views.'—'Protecting and Expanding Civic Space', *United Nations Office of the High Commissioner for Human Rights*, August 30, 2020, <https://www.ohchr.org/EN/Issues/CivicSpace/Pages/ProtectingCivicSpace.aspx>.

<sup>2</sup> Good governance regime.

continuity of violations across regimes, this report will first set out the state of minority rights during the Yahapalanaya regime and, thereafter, focus on the situation post-presidential election of November 2019.

This report was written in the midst of the Covid-19 pandemic, which exposed systemic and structural weaknesses of the pre-Covid-19 world in Sri Lanka. During the pandemic, it became evident that rising inequalities that remained unaddressed increased the vulnerability of certain social groups, which due to elements such as race, ethnicity, gender, religion, or sexual orientation became more vulnerable to discrimination, marginalisation, and even violence. The aforementioned groups have also been affected by the resurgence of ethno-nationalism and identity politics, and increasing public support amongst the majority community for a populist and authoritarian government. In this context, the government has used the pandemic as a cover to restrict civic space as well as erode minority rights. Hence, the final section of the report will focus on the impact of the pandemic on civic space and the protection of the rights of minorities in Sri Lanka.

In each of the aforementioned three sections of the report, the political context and the state of civic space will be set out first, and, thereafter, the state of various ethno-religious minorities within that context will be analysed.

### **Methodology**

Due to the pandemic, the report is based on a desk review of resources in the public domain and the author's notes of field visits undertaken during the period under review.

### **The Yahapalanaya Government 2015-2019**

#### **Political Context**

The Yahapalanaya government won the presidential and parliamentary elections in 2015 on promises of good governance and anti-corruption after ten years of the Rajapaksa regime which stood accused of violations of humanitarian and human rights law, corruption and executive overreach. To the Tamils, it promised a

political solution to the thirty-year-old ethnic conflict which the Rajapaksa government had ended militarily, and solutions to deal with the violations of the past, for which it received their vote. However, by the end of its tenure, most of those promises had not been fulfilled and the government was dogged by scandals such as the Central Bank bond corruption allegations. In the Southern Sinhala-majority part of the country, this created an atmosphere in which public discontent was effectively used by the Sri Lanka Podujana Peramuna (SLPP), a new opposition party founded by the Rajapaksas, to create public clamour for a nationalist and populist government. Coupled with the SLPP's relentless campaign to portray the Yahapalanaya government as anti-Sinhalese and pro-minority, and the government's failure to counter these misrepresentations, it led to the electoral loss of the Yahapalanaya government in November 2019. At the same time, the lack of decisive action in fulfilling promises made to the Tamils resulted in the Tamil community becoming disillusioned with the Yahapalanaya government's ability to address their needs and concerns.<sup>3</sup> This, in turn, provided space for more nationalist parties to increase their popularity within the Tamil community as well.

The terror attacks on Easter Sunday that took place in six places around the country on 21 April 2019 caused a considerable shift in the socio-political context, both in terms of civic space and the rights of minorities. The attacks created an atmosphere for the state to take action that restricted civic space, such as declaring a state of emergency, and also for the state and society to engage in and justify anti-Muslim acts. The Yahapalanaya government not only failed to be proactive in identifying and addressing the root causes of anti-minority rhetoric but also through its action, such as the Niqab ban, as well as inaction in countering anti-minority sentiment and action, made discrimination against Muslims to be perceived as publicly acceptable. This consequently created a sense of impunity and emboldened section of the public to openly engage in bigoted behaviour. The outcome was the undermining of the

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<sup>3</sup> 'Sampanthan Says Tamil People Losing Patience with Yahapalanaya.' *Colombo Telegraph*, February 24, 2017, <https://www.colombotelegraph.com/index.php/sampanthan-says-tamil-people-losing-patience-with-yahapalanaya/>.

rights of the minorities and increased and virulent anti-minority action by both state and non-state actors.

### **Civic Space**

Civic space opened up following the end of the Rajapaksa regime and the Yahapalanaya regime assuming power in January 2015. However, towards the last years of the Yahapalanaya regime, the resumption of the curtailment of civic space was seen in the use of the law to curb freedom of expression, while failing to use the same law against those who engage in propagating hate and inciting violence against ethno-religious groups. For instance, writer Shakthika Sathkumara was arrested on 1 April 2019 and remanded in fiscal custody for violating the International Covenant on Civil and Political Rights (ICCPR) Act (2007)<sup>4</sup> by publishing a short story in which he alluded to sexual abuse in Buddhist temples, which was deemed to be inciting religious hatred.<sup>5</sup> Hence, the ICCPR Act was used by the state as a tool to curb freedom of expression and silence critics but not arrest persons inciting ethnic/religious tensions. In response to the misuse of ICCPR Act, the Human Rights Commission of Sri Lanka issued a statement on the correct interpretation of Section 3 of the Act which sets out the offence of advocating for national, religious, or racial hatred that constitutes incitement to discrimination, hostility, or violence. Despite this, the selective use of the ICCPR Act, which has undermined its purpose, has continued.<sup>6</sup>

The declaration of a state of emergency by President Sirisena on 22 April 2019<sup>7</sup> after the Easter attacks and the promulgation

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<sup>4</sup> Socialist Republic of Sri Lanka, International Covenant on Civil and Political Rights 2007, Section 3, 'No person shall propagate war or advocate national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.'

<sup>5</sup> 'Opinion No. 8/2020 Concerning Delankage Sameera Shakthika Sathkumara (Sri Lanka)', Ohchr.org, 2020, [https://www.ohchr.org/Documents/Issues/Detention/Opinions/Session87/A\\_HRC\\_WGAD\\_2020\\_8\\_Advance\\_Edited\\_Version.pdf](https://www.ohchr.org/Documents/Issues/Detention/Opinions/Session87/A_HRC_WGAD_2020_8_Advance_Edited_Version.pdf).

<sup>6</sup> 'HRCSL Issues Guidelines On Application of Hate Speech Law (S.3 Of ICCPR Act)', Human Rights Commission of Sri Lanka, 2019, <http://www.hrsl.lk/hrsl-issues-guidelines-on-application-of-hate-speech-law-s-3-of-iccpr-act/>.

<sup>7</sup> Presidential Secretariat, *Extraordinary Gazette No. 2120/3-2019*, 2019, Colombo, <https://www.gazette.lk/2019/04/the-gazette-declaring-state-of->

of emergency regulations under the Public Security Ordinance contributed to the shrinking of civic space. Since Sri Lanka has been under a state of emergency for most of its post-independence life, there is public acceptance of militarisation of policing and law enforcement, and of the military exercising powers that are not subject to judicial review. While it could be argued that the declaration of a state of emergency for a short period due to the Easter attacks can be justified, the promulgation of emergency regulations that clearly and disproportionately impinged on civic rights signalled a reversion to creating a climate in which the executive overreaches and curbs on civic rights are normalised.

After the state of emergency was allowed to lapse on 23 August 2019, the President used Section 12 of the Public Security Ordinance (PSO) to ‘call out’ the armed forces to maintain law and order. Unlike the declaration of the state of emergency, which has to be ratified by the parliament within fourteen days at first instance and thereafter every month, the president has to merely issue a gazette notification each month to exercise his power under Section 12 of the PSO. Hence, the gazette is not subject to scrutiny or debate by the parliament. The calling upon of the armed forces to maintain law and order, i.e., effectively engage in policing, went unnoticed, and there was no challenge to it by civil society or even the Human Rights Commission of Sri Lanka. The President’s use of Section 12 of the PSO could have gone unnoticed due to the fact it did not have to be ratified by Parliament, as well its use being normalised as it had been used for an extended period by the Mahinda Rajapaksa regime.

There are other factors that enabled a relatively easy transition to an authoritarian government post-November 2019. These include the failure of the Yahapalanaya government to demilitarise the north of the country, inhabited primarily by Tamils, with all military camps remaining at the end of the Yahapalanaya government. The involvement of the military in activities that are outside their purview, such as business ventures, was also allowed to continue during the Yahapalanaya government.<sup>8</sup> Further, the

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[emergency-from-april-22-the-public-security-ordinance-emergency-order.html](#).

<sup>8</sup> Joint Civil Society Submission to the UN Periodic Review of Sri

continued existence of the informal intelligence apparatus, which is not held accountable to any democratic oversight entity or process, also meant that civil society organisations, particularly in the north, continued to receive ‘visits’ from officers from the different intelligence as well as law enforcement entities.<sup>9</sup> For instance, families of the disappeared who by June 2020 had been protesting for over 1000 days at multiple locations in the Northern Province complained of regular monitoring by the intelligence agencies during their protests.<sup>10</sup> The same was stated by persons protesting for the release of land in Keppapilavu, Mullaitivu in the Northern Province (more on this under Land Rights section later).

## **The Rights of Ethno-Religious Minorities**

### ***Rights of the Muslim Community***

In the context of historical rights violations and organised state violence against both Tamil and Muslim communities in Sri Lanka, for which perpetrators have rarely been held accountable, the Yahapalanaya government’s failure to bring to account those responsible for even recent incidents of anti-Muslim violence, such as riots in Digana and Aluthgama, entrenched and normalised impunity. This further encouraged continued harassment, discrimination, and the use of violence against Muslims, such as during the period after the Easter attacks on 21 April 2019.<sup>11</sup> Anti-Muslim attacks are not new, as the propagation of hate and incitement to violence, by both state and non-state actors, has occurred throughout the history of Sri Lanka. Prior to the Yahapalanaya regime, during the Mahinda Rajapaksa regime,

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Lanka (28<sup>th</sup> Session) *United Nations Human Rights Office of the High Commissioner*, March 30, 2017, <https://uprdoc.ohchr.org/uprweb/downloadfile.aspx?filename=4469&file=EnglishTranslation>.

<sup>9</sup> Ibid.

<sup>10</sup> ‘Families decry surveillance as Sri Lankan intel out in force at disappeared protest’, *Tamil Guardian*, December 11, 2019, <https://www.tamilguardian.com/content/families-decry-surveillance-sri-lankan-intel-out-force-disappeared-protest>.

<sup>11</sup> ‘Sri Lanka: Muslims Face Threats, Attacks’, *Human Rights Watch*, July 3, 2019, <https://www.hrw.org/news/2019/07/03/sri-lanka-muslims-face-threats-attacks>.

there were campaigns against the Muslim community fuelled by social as well as mainstream media and the Buddhist clergy that received either overt or tacit support of the state. This indicates the existence of deep-seated communalism and prejudice, within the state structure and society that have to be addressed.

Three weeks after the Easter attacks, anti-Muslim riots occurred on 13 May 2019 in certain Muslim-majority towns, mainly in the North Western Province and some areas in the Western Province. This resulted in damage to property and the death of an individual, Fouzul Ameer, a carpenter, who was hacked to death at the entrance to his home.<sup>12</sup> Persons from areas, such as Kottaramullai and Thummodara in the North Western Province, stated that they had heard of rumours of a possible attack the previous night and had contacted the police and state authorities numerous times requesting protection, which never materialised.<sup>13</sup> The violence took place while a curfew had been declared in these areas, and it is common practice for the police to establish checkpoints when a curfew is declared to prevent the movement of people. In this context, the ability of mobs to attack Muslim villages points to grave negligence and/or collusion on the part of the state.

Although more than 70 persons<sup>14</sup> were arrested for the violence, there were allegations that many who were responsible, especially those from within the community who participated in the violence in Kottaramullai and Thummodara were not arrested. Even those who were arrested were not detained under the ICCPR Act for incitement to violence, which would be a non-bailable offence, but under the Penal Code and were granted bail within a few weeks of arrest. The granting of bail in this instance should be contrasted with another case of refusal of bail to a seventeen-year-old pregnant Muslim woman wearing a hijab. She was arrested for allegedly covering her face when she covered her mouth with a

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<sup>12</sup> 'Police stood by while mobs rampaged: HRCSL', *Sunday Observer*, May 26, 2019, <http://www.sundayobserver.lk/2019/05/26/news/police-stood-while-mobs-rampaged-hrcsl>.

<sup>13</sup> Randev, 2019, 'HRCSL provides guidelines to acting IGP', *The Morning—Sri Lanka News*, <http://www.themorning.lk/hrcsl-provides-guidelines-to-acting-igp/>.

<sup>14</sup> 'Sri Lanka extends nationwide curfew after anti-Muslim riots' *BBC Asia*, May 15, 2019, <https://www.bbc.com/news/world-asia-48269240>.

handkerchief while experiencing a moment of nausea, but she was not given bail for nearly two months. To date, there is no known case of prosecution of perpetrators of the May 2019 anti-Muslim violence. The aforementioned inaction and action of various state entities raise questions about their impartiality and prima facie point to possible anti-Muslim prejudices embedded within these institutions. These are also examples of state inaction that has created a sense of impunity amongst the public and, thereby, emboldened people to engage in anti-Muslim acts.

After the Easter attacks, a large number of Muslim men were arrested seemingly without reasonable cause. For example, there were cases of men being arrested for possessing items such as chlorine, which was suspected to be explosive materials, the Quran and documents in Arabic, having a song (Qaseeda) on the hundred names of Allah on their phone, and a dagger. Due to this, members of the Muslim community had burnt Qurans and magazines and other documents that were in Arabic for fear of being arrested.<sup>15</sup>

The Muslim men were mostly arrested and detained under the Prevention of Terrorism Act (PTA), which has been flagged for decades as a law that violates key human rights, in particular due process rights, and violates the accused's right to enjoy a fair trial.<sup>16</sup> Historically, the PTA was used against the Tamil community with torture in custody and extraction of forcible confessions from detainees documented through the years.<sup>17</sup> In 2019, after the Easter attacks, this law was used to arrest a large number of Muslim men and numerous instances of violation of due process rights were reported. Given the seriousness of terror offences, the arrest of anyone under the PTA also serves to curb challenges to such an arrest due to concern amongst the public and human rights defenders of possible state backlash or being

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<sup>15</sup> Author's notes based on complaints received and dealt with during her tenure as Commissioner of the Human Rights Commission of Sri Lanka.

<sup>16</sup> 'Arrest under PTA: HRCSL responds to President', *The Island*, June 27, 2016, [http://www.island.lk/index.php?page\\_cat=article-details&page=article-details&code\\_title=147686](http://www.island.lk/index.php?page_cat=article-details&page=article-details&code_title=147686).

<sup>17</sup> 'Sri Lanka: Repeal Abusive Counterterrorism Law', *Human Rights Watch*, January 10, 2020, <https://www.hrw.org/news/2020/01/10/sri-lanka-repeal-abusive-counterterrorism-law>.

labelled terrorists themselves.<sup>18</sup> This has led to lawyers showing reluctance to represent PTA detainees and the judiciary adopting a rather conservative approach in dealing with these cases.

Following the Easter attacks, persons who were stopped at checkpoints narrated instances of being taken to the police station for interrogation because they had a laptop in their possession or their national identity card mentioned a different address than their current residence.<sup>19</sup> The arrest and detention of a large number of men, who were most often the primary and even sole income earners of their families, caused untold hardship and emotional trauma for the families, who also had little or no knowledge of how or where to seek legal assistance. In most instances, they could not afford to retain legal counsel.

Even those who could afford to retain lawyers faced numerous obstacles as lawyers refused to appear for detainees for fear of being seen as representing terrorists and the possible resultant public backlash. In certain Bars, lawyers not only refused to represent the detainees but also attempted to intimidate other lawyers appearing for detainees in an attempt to prevent them from representing detainees, such as at the Marawila Bar.<sup>20</sup> Although the Human Rights Commission of Sri Lanka wrote to the Bar Association of Sri Lanka (BASL) based on credible and verified reports it had received from the families of detainees and lawyers who appeared for the detainees, the BASL responded that there have been ‘no formal resolutions by any identified regional branch resolving to refrain from representing suspects arrested in relation to the terror attacks on 21st April’<sup>21</sup> and did not initiate a formal inquiry into

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18 D.B.S. Jeyaraj, 2019, ‘Anti–Terrorist Action Must Not Become a Witch Hunt Against Sri Lankan Muslims’, *Daily Mirror*, May 4, 2019.

19 Author’s notes based on complaints received and dealt with during her tenure as Commissioner of the Human Rights Commission of Sri Lanka; Lisa Fuller and Rukshana Rizwie, ‘Muslims “targeted with arbitrary arrests” after Easter massacre’, Al Jazeera, June 16 2019, <https://www.aljazeera.com/indepth/features/muslims-targeted-arbitrary-arrests-easter-massacre-190613123018003.html>.

20 ‘Letter from the Chairperson of the Human Rights Commission of Sri Lanka, Dr. Deepika Udagama, to the President of the Bar Association of Sri Lanka Mr. Kalinga Indatissa (PC)’, *Human Rights Commission of Sri Lanka*, July 25, 2019, <http://www.hrcsl.lk/wp-content/uploads/2020/02/HRCSL-Response-to-Bar-Association-of-Sri-Lanka.pdf>.

21 Ibid.

the matter. The BASL's response illustrates a lack of understanding of anti-Muslim sentiments prevailing at the time, as well as of the manner in which informal social practices impact legal rights and the ability of detainees to enjoy their due process rights, especially to a fair trial.

Incidents of harassment, intimidation, discrimination, and violence against Muslims unfolded within a climate in which hate speech in both mainstream media as well as social media was rampant. For example, on 15 May 2019, a few days after the anti-Muslim riots, Gnanarathana Thero, one of Sri Lanka's most senior Buddhist monks, 'called for stoning to death of Muslims, and propagated an unfounded allegation that Muslim-owned restaurants put "sterilization medicine" in their food to suppress the majority Sinhalese Buddhist birth rate'.<sup>22</sup> The use of different forms of birth control and sterilisation methods by the Muslim community to reduce the birth rate of the Sinhalese is propaganda that has been used to spread hate and incite violence against Muslims since 2013. In 2018, rumours of a restaurant in Ampara in the Eastern Province mixing sterilisation pills in the food sparked violence which spread to Kandy in the Central Province. Hence, rumours in both mainstream and social media coincided with incidents of violence and even caused or worsened them. It should be noted that at no point did the state use the ICCPR Act to take action against Gnanarathana Thero despite past incidents of rumours and hate speech sparking violence.

These rumours were repeated by certain religious leaders and political actors to portray Muslims as the 'other', a community that does not align itself with the rest of the Sri Lankan population but rather pledges allegiance to the global Muslim community. The notion that the Muslim community behaves and dresses differently and follows a different set of rules and legal regulations under the Sharia Law instead of conforming to the beliefs and behavioural practices that are deemed to be 'Sri Lankan' by the Sinhalese community has been used to question their patriotism

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<sup>22</sup> 'Sri Lanka: Muslims Face Threats, Attacks', *Human Rights Watch*, July 3, 2019, <https://www.hrw.org/news/2019/07/03/sri-lanka-muslims-face-threats-attacks>.

and connection to the country. This ultimately has the effect of demonising the Muslim community by insinuating they have ulterior motives and an agenda to ‘take over’ a pre-dominantly Sinhalese nation by mainstreaming Islamic beliefs and practices under the Sharia Law.

State inaction in the face of anti-Muslim violence and the selective and arbitrary use of the law against Muslims legitimised anti-Muslim rhetoric, propaganda, and conspiracy theories that deepened the divides between ethnic groups by validating the fears of the majority ethnic community. An example of the arbitrary use of the law is an arrest under the ICCPR Act of a Muslim woman in the town of Mahinyangana who wore a dress in public that was claimed to have a print resembling the Dharmachakra, an important Buddhist symbol, which was seen as an attempt to incite racial tensions. Like the seventeen-year-old pregnant Muslim woman, she too was remanded in custody for several weeks before being released on bail.

As anti-Muslim sentiment, fanned by mainstream and social media, increased within the society, Muslim women became the targets of harassment and discrimination in public and semi-private spaces. For instance, women who wore the hijab, i.e., only covering their heads, were refused entry or asked to remove their hijab and even show the security at the entrance that there was nothing hidden under their hijab at public as well as private establishments. Women reported that they were subjected to discriminatory treatment even by colleagues, neighbours, and acquaintances who insisted they remove the hijab and abaya, a robe that covers the woman’s entire body. For instance, women who worked at the Divisional Secretariat of Karuwalugasbewa in the North Western Province reported such pressure and harassment, including taunts by their colleagues.<sup>23</sup>

Emergency Regulation 32A banned ‘any garment, clothing or such other material concealing the full face which will in any manner cause any hindrance to the identification of a person’ from being worn in a public place. The Regulation meant that Muslim

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<sup>23</sup> ‘Harassed Muslim women complain to HRC.’ *Daily Mirror*, May 14, 2019.

women could not wear the niqab,<sup>24</sup> a garb worn to cover the whole face, with or without the eyes concealed, in public spaces. This Regulation was seen as curbing the right of Muslim women since they are the sole demographic group to practice face-covering in public at all times as a matter of choice. Various factions of the majority ethnic community argued that such a ban was necessary in light of the state of emergency, despite the argument that none of the people who were involved in the Easter attack had been wearing a niqab or even the hijab. The Regulation also exacerbated the harassment faced by Muslim women wearing the hijab with often no distinction being made between the niqab and the hijab by citizens or even state officials. The harassment and fear of being arrested for wearing a hijab resulted in Muslim women refraining from leaving their homes, which violated their freedom of movement, made them prisoners in their homes, and made them dependent on their male relatives for all their needs.<sup>25</sup> Although the ban was in place for four months following the attacks until the state of emergency was lifted, scrutiny and harassment of Muslim women who resumed wearing the niqab continued, indicating deeply ingrained societal prejudices that were openly expressed when people felt the law validated their prejudicial actions.<sup>26</sup>

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<sup>24</sup> Hillary Margolis, 'Sri Lanka's Face-Covering Ban a Wrongheaded Response to Easter Bombings,' *Human Rights Watch*, May 2, 2019, <https://www.hrw.org/news/2019/05/02/sri-lankas-face-covering-ban-wrongheaded-response-easter-bombings>.

<sup>25</sup> On May 15, 17-year-old Zavahir Rimasha went to have her photograph taken for her national identity card. She was wearing a hijab, which covered her hair. Zavahir Rimasha was 8-months pregnant with her first child, and while she was at the studio she was reportedly overcome by a moment of nausea. When she covered her face with her handkerchief, another customer complained that she had covered her face, and then called the police. She was arrested under the Emergency Regulations and held in custody for over three weeks until June 7, when she was granted bail.' 'Sri Lanka: Muslims Face Threats, Attacks,' *Human Rights Watch*, July 3, 2019, <https://www.hrw.org/news/2019/07/03/sri-lanka-muslims-face-threats-attacks>.

<sup>26</sup> 'Locals confront a Muslim woman wearing a Burqa (video)', *NewsHub*, September 21, 2019, <https://newshub.lk/en/2019/09/21/locals-confront-a-muslim-couple-wearing-a-burqa-video/>; "Why Are You Covering Your Face?" | Muslim Woman In Niqab Confronted By Extremist In Sri Lanka', *DOA Muslims*, Uploaded on February 6, 2020, YouTube video, 3:15 min, <https://www.youtube.com/watch?v=MJJtegEwfzg>.

The Yahapalanaya government did nothing to counter the hate speech or to ensure that the communities under attack were protected and those inciting and perpetrating violence against Muslims were held to account. An example of state inaction in countering the rhetoric of hate is their silence when a fast-unto-death campaign was undertaken by a Buddhist monk, Athuraliye Rathana, on May 31, 2019 in front of the Temple of the Tooth in Kandy, Central Province, one of the most sacred sites to Buddhists. He demanded that three senior Muslim ministers be removed from their position because of their alleged links to the Easter Attacks. This act created tension in Kandy as well as in other areas where Sinhala mobs forced shops to remain closed. In response to his fast, nine Muslim ministers and two Muslim provincial governors resigned from their ministerial portfolios collectively on 3 June but were sworn in again as ministers on 29 July 2019.<sup>27</sup> At the time of their resignation, the ministers expressed disappointment in the way the government had handled communal tensions and stated they were ‘sacrificing’ their portfolios to make way for ‘a proper investigation’.<sup>28</sup>

### ***Tamil Community***

The grievances of the Tamil community, which led to the thirty-year internal armed conflict that came to an end in 2009 with the military defeat of the Liberation Tigers of Tamil Eelam (LTTE), remained largely unaddressed during the Yahapalanaya regime.

### ***A Political Solution and Dealing with the Past***

A key example of the Yahapalanaya government ignoring calls for accountability for human rights violations committed against the Tamils is the appointment of Major General Shavendra Silva in August 2019 as Commander of the Army by the president despite serious allegations of violations of human rights and humanitarian law against him.<sup>29</sup> This was also contrary to the process at the UN

<sup>27</sup> Dissanayake, Chathuri, ‘Muslim leaders resign en masse.’ *Daily Financial Times*, June 4, 2019, <http://www.ft.lk/top-story/Muslim-leaders-resign-en-masse/26-679382>.

<sup>28</sup> Ibid.

<sup>29</sup> Johnson, Daniel, ‘Appointment of alleged war criminal to head of Sri Lanka

Human Rights Council to which the Yahapalanaya government had agreed via HRC Resolution 30/1 and 34/1.

In relation to the political solution to the ethnic conflict, the government initiated a process of constitutional reform, by creating a Constitutional Assembly and a Steering Committee chaired by the prime minister with the membership of all political party leaders. The thematic sub-committees of the Constitutional Assembly produced reports consisting of rather progressive recommendations, that were submitted to the Steering Committee which in turn issued an Interim Report. The reform process, however, stalled due to the deteriorating relationship between the president and the prime minister, and the constitutional coup of October 2018. To date, a political solution that addresses the root causes of the ethnic conflict remains elusive.

Where the justice and truth demands of the Tamil community are concerned,<sup>30</sup> although the government enacted the Office on Missing Persons (Establishment, Administration And Discharge Of Functions) Act in 2016 and established the Office on Missing Persons (OMP) with the appointment of members in February 2018, the mandate of the institution is limited to searching and tracing missing persons. If the OMP finds that an offence warranting investigation has been committed, it can report it to law enforcement or the prosecuting authority. The OMP has to date functioned independently and has spent the two years since its establishment hiring staff, formulating procedures, opening three regional offices, and initiating a few investigations.<sup>31</sup> The government established the Office of Reparations in 2018, which as of yet has not announced any comprehensive reparation programme for conflict-affected communities that addresses the

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army “deeply troubling”, says UN human rights chief.’ *UN News*, August 19, 2019, <https://news.un.org/en/story/2019/08/1044501>.

<sup>30</sup> For Sri Lanka, a Long History of Violence.’ *The New York Times*, April 21, 2019, <https://www.nytimes.com/2019/04/21/world/asia/sri-lanka-history-civil-war.html>.

<sup>31</sup> ‘OMP made progress amidst lack of cooperation from state actors & continuous efforts to deny the rights of families of the disappeared—Saliya Pieris’ *Sri Lanka Brief*, October 28, 2019, <https://srilankabrief.org/2019/10/omp-made-progress-amidst-lack-of-cooperation-from-state-actors-continuous-efforts-to-deny-the-rights-of-families-of-the-disappeared-saliya-pieris/>.

multiple and varying losses over decades. The justice- and truth-seeking mechanisms have not been established.<sup>32</sup>

Although the government established the aforementioned two mechanisms, the public rhetoric of key figures in government, such as President Sirisena, refused to acknowledge the need for accountability, and at times even showed a lack of respect for the victims and their demands for justice, truth, and reparations. For instance, in 2017, President Sirisena announced that war heroes would not be prosecuted, thereby clearly indicating that the likelihood of a justice mechanism being established was slim.<sup>33</sup> Furthermore, in January 2016, Prime Minister Wickremesinghe stated that those who disappeared were probably dead, illustrating callous disregard for the pain and trauma of the families of the disappeared.<sup>34</sup>

### *Land Rights*

Land is a contentious issue, since land acquisition/occupation by the state and statesponsored settlement of Sinhalese in Tamil-majority areas is one of the root causes of the ethnic conflict.

In the Tamil majority areas in the North and East, land that was occupied by the military during the war has still not been completely released to their rightful owners, for instance in Keppapilavu in Mullaitivu and Mullikulam, Mannar in the Northern Province. In the Eastern Province, those whose lands are in Sampur in the Trincomalee District also claim their lands are yet to be returned. Additionally, there are those in Sampur who state that they were forced to sell their lands to the military or did so due to misrepresentations made to them.<sup>35</sup> In areas such as Mullaitivu,

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<sup>32</sup> 'Sri Lanka: Failed Pledges Mar 10 Years Since War's End', *Human Rights Watch*, May 17, 2019, <https://www.hrw.org/news/2019/05/17/sri-lanka-failed-pledges-mar-10-years-wars-end>.

<sup>33</sup> 'Sri Lanka leader to shield general from war crimes case.' *Al Jazeera*, September 4, 2017, <https://www.aljazeera.com/news/2017/09/sri-lanka-leader-shield-general-war-crimes-case-17090319333527.html>.

<sup>34</sup> 'Missing and disappeared persons most likely dead says Sri Lanka prime minister', *Tamil Guardian*, January 25, 2016, <https://www.tamilguardian.com/content/missing-and-disappeared-persons-most-likely-dead-says-sri-lanka-prime-minister>.

<sup>35</sup> People's Alliance for Right to Land, 'Our Land, Our Life—People's Land

there have been reports of land that has been historically used by persons who either have lost land documentation or do not possess official land documents being arbitrarily acquired as forestland.<sup>36</sup> This has taken place in Kokuthoduwai in Mullaitivu where the land of displaced persons who returned in 2015 was acquired by the Forest Department, which then transferred land ownership to a Sinhalese.<sup>37</sup>

In many instances, land disputes are in relation to places of worship, where there have been attempts to destroy Hindu temples that have existed for decades, if not for hundreds of years, and build Buddhist temples, or to declare the land on which the Hindu temple is built as an archaeological site, thereby preventing the temple from being used for worship. This points to state-sponsored attempts underpinned by Sinhala Buddhist nationalist ideology to colonise land, a strategy that has little room or tolerance for pluralism and diversity of Sri Lankan society. The added layer of militarisation exacerbates the problem as there is heavy military presence in these areas and they are often enlisted to support such processes. Such land disputes in the North and East include the Neeraviyadi Pillayar temple and the Kanniya temple.<sup>38</sup>

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Commission Report 2019-2020', *South Asia Citizens Web*, March 31, 2020, <http://www.sacw.net/article14282.html>.

<sup>36</sup> Ibid.

<sup>37</sup> Ibid.

<sup>38</sup> 'Mullaitivu court rules in favour of Neeraviyadi Pillaiyar temple', *Tamil Guardian*, May 14, 2019, <https://www.tamilguardian.com/content/mullaitivu-court-rules-favour-neeraviyadi-pillaiyar-temple>; 'Neeraviyadi: Sri Lankan army sets up 'sham' archaeological museum next to Hindu temple', *Tamil Guardian*, October 29, 2019, <https://www.tamilguardian.com/content/neeraviyadi-sri-lankan-army-sets-sham-archaeological-museum-next-hindu-temple>; 'Sri Lanka: Buddhist mob violate court order with police backing', *Journalists for Democracy in Sri Lanka*, September 24, 2019, <http://www.jdslanka.org/index.php/news-features/politics-a-current-affairs/912-sri-lanka-buddhist-mob-violate-court-order-with-police-backing>; Meera Srinivasan, 2019. 'When the saffron robe has the final say', *The Hindu*, September 28, 2019, <https://www.thehindu.com/news/international/when-the-saffron-robe-has-the-final-ay/article29543715.ece>; 'Tamils protest Kanniya Hindu temple destruction despite Sinhalese assaults and security force obstructions', *Tamil Guardian*, July 17, 2019, <https://www.tamilguardian.com/content/tamils-protest-kanniya-hindu-temple-destruction-despite-sinhalese-assaults-and-security>.

### ***Christian Community***

The rights of Christians, especially the evangelical community, were frequently violated during the Mahinda Rajapaksa regime, and these violations continued during the Yahapalanaya regime. Online hate campaigns against evangelical communities increased in 2017 and 2018, leading to sporadic incidents of off-line violence. Facebook posts in January 2019 calling for violence against a Christian community in Batticaloa on the basis of false rumours about their activities is one such example.<sup>39</sup>

In 2019, 94 incidents of violations against Christian minorities by both state and non-state actors were recorded compared to eighty-eight in 2018. Fifty-six of the eighty-eight incidents recorded included incidents of threats, intimidation, or coercion, and nineteen incidents of violence.<sup>40</sup>

Where these incidents are concerned, the perpetrators are often members of the local community, of either ethnicity, i.e., Sinhala or even members of the Tamil who themselves have been subjected to historical discrimination and violence, who accuse the Christians of proselytisation and use violence with a sense of impunity. Buddhist monks from temples close to evangelical churches leading campaigns of harassment and violence against the churches are also common. Four Buddhist monks led approximately 200 persons and forcibly entered the Christian Family Church premises in Galgamuwa in the North Western Province on 24 February 2019. They demanded the worship service be stopped, abused congregants in obscene language, and vandalised the premises. Thereafter, they dragged a female congregant onto the street, pushed her to the ground at the feet of the monks, and beat her. The pastor filed a police complaint and the Buddhist monks filed a counter-complaint stating that the pastor had breached the peace

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<sup>39</sup> 'Report of the Special Rapporteur on freedom of religion or belief—Visit to Sri Lanka'. OHCHR, February 28, 2020, [https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session43/Documents/A\\_HRC\\_43\\_48\\_Add.2\\_AdvanceUneditedVersion.docx](https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session43/Documents/A_HRC_43_48_Add.2_AdvanceUneditedVersion.docx).

<sup>40</sup> Office of International Religious Freedom, 'International Religious Freedom Report Sri Lanka 2019—May 2020', *US State Department*, May 2020 <https://www.state.gov/wp-content/uploads/2020/05/SRI-LANKA-2019-INTERNATIONAL-RELIGIOUS-FREEDOM-REPORT.pdf>.

in the area. The breach of peace case was dismissed while the assault case was fixed for trial in December 2019.<sup>41</sup> This illustrates active community participation, as well as the involvement of local Buddhist priests. Another egregious violation that took place in 2018 is the abduction of a Christian pastor in Colombo by unidentified persons; the pastor was tortured and released 24 hours later.<sup>42</sup> To date, no arrests have been made.

These offences were committed with a sense of impunity that stems from the knowledge that prejudice against evangelicals is prevalent amongst the general population, and hence the police will not take action against them. This is echoed by the National Christian Evangelical Alliance of Sri Lanka (NCEASL), which has alleged that state entities that are mandated to provide protection from such acts and are tasked with taking action against those engaging in propagating hate and perpetrating violence are complicit in these acts mostly through inaction.<sup>43</sup> An example is the allegation by the pastor who was threatened with violence on 12 January 2019 in Batticaloa district; he claimed that despite registering an official complaint he was compelled by the police to state in writing that he did not wish to pursue the matter further.

Reportedly, at a meeting with then Prime Minister Wickremesinghe on 18 April 2019, Bishop Asiri Perera, the president of the country's Methodist Church had stated, 'I wonder if the police act only for a segment of society, and don't believe it must protect everyone equally. Each time a church comes under attack, we hear about how the church was barely able to make a complaint to the police. Victims go seeking protection and return feeling utterly insecure'.<sup>44</sup>

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41 Office of International Religious Freedom, 'International Religious Freedom Report Sri Lanka 2019–May 2020', *US State Department*, May 2020, <https://www.state.gov/wp-content/uploads/2020/05/SRI-LANKA-2019-INTERNATIONAL-RELIGIOUS-FREEDOM-REPORT.pdf>; 'Religious Freedom Violations in Sri Lanka: The use of Rights to Information law to assess the responses of Law Enforcement Authorities and the Judiciary.' National Christian Evangelical Alliance of Sri Lanka (NCEASL), July, 2020.

42 'Sri Lanka: The 2019 Religious Freedom Landscape' World Evangelical Alliance and the National Christian Evangelical Alliance of Sri Lanka, February 11, 2019, <http://www.worldevangelicals.org/un/pdf/HRC40%20Sri%20Lanka.pdf>.

43 Ibid.

44 Ibid.

## Post-2019 Presidential Elections

### Political Context

President Gotabaya Rajapaksa dissolved the parliament with effect from 2 March 2020, and the parliamentary election was scheduled for 25 April 2020. Since elections could not be held even three months after the dissolution due to the pandemic, opposition parties called upon the president to reconvene the parliament to ensure that there would not be a power vacuum for an extended period, particularly during a national crisis. It was to also ensure oversight over public finance and to prevent executive overreach.<sup>45</sup> The president refused to heed their calls, and even stated that he did not have to convene the parliament since his party did not have a majority, illustrating that party politics takes precedence over the public good. In response, several persons petitioned the Supreme Court of Sri Lanka challenging the dissolution of the parliament. The Court refused to grant leave to proceed with the application.<sup>46</sup>

The elections were held on 5 August 2020 in which the Sri Lanka Podujana Party (SLPP) won a two-thirds majority, hence empowering it to bring about any constitutional change it wishes. The lack of a functioning parliament and executive rule through ad-hoc mechanisms for nearly five months contributed to undermining of democracy and normalised executive overreach, which had begun soon after the presidential election. An example of such executive overreach that borders on interference with the judiciary is a speech by President Gotabaya in February 2020 at the National Law Conference where he stated that ‘it is important that

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<sup>45</sup> Meera Srinivasan, ‘We’ll cooperate, reconvene Parliament: Sri Lankan Opposition’, *The Hindu*, April 27, 2020. <https://www.thehindu.com/news/international/well-cooperate-reconvene-parliament-sri-lankan-opposition/article31445543.ece>; ‘Sri Lanka’s Other Covid-19 Crisis: Is Parliamentary Democracy at Risk?’, International Crisis Group, May 29, 2020, <https://www.crisisgroup.org/asia/south-asia/sri-lanka/sri-lankas-other-Covid-19-crisis-parliamentary-democracy-risk>.

<sup>46</sup> ‘Supreme Court dismisses FR petitions’, *Daily News*, June 2, 2020, <https://www.dailynews.lk/2020/06/02/law-order/219880/supreme-court-dismisses-fr-petitions>; Asad Hashim, ‘Sri Lanka stares at constitutional crisis as polls delayed’, *Al Jazeera*, May 23, 2020, <https://www.aljazeera.com/news/2020/05/sri-lanka-stares-constitutional-crisis-polls-delayed-200522072254187.html>.

the judiciary does not interfere needlessly in the functioning of the executive and legislative branches of the government'.<sup>47</sup>

On 1 January 2020, President Rajapaksa appointed the Commander of the Army Shavendra Silva as Chief of Defence Staff, further consolidating Silva's position and symbolically repudiating allegations of human rights and humanitarian law violations against him. In February 2020, the United States imposed a travel ban on Silva and members of his family. In response to this Prime Minister Mahinda Rajapaksa blamed the opposition parties, the Tamil National Alliance (TNA) and the Janatha Vimukthi Peramuna (JVP), for the imposition of the ban. It should be noted that various members of the main opposition party, the United National Party, made statements in support of Silva and were critical of the travel ban.<sup>48</sup> Prime Minister Mahinda Rajapaksa further stated that Sri Lanka would withdraw from UN Human Rights Council Resolution 30/1 and 40/1, which was formally done on 27 February 2020.<sup>49</sup>

## **Civic Space and the Protection of Human Rights**

### ***Civic Space***

President Rajapaksa, like President Sirisena before him, began using Section 12 of the PSO to call out the armed forces to maintain law and order. As of August 2020, he continues to issue gazette notifications every month in this regard. Like before, this practice remains unchallenged and has become normalised.

Prime Minister Mahinda Rajapaksa's remarks made in February 2020 that the country is divided between patriots and those he referred to as 'born traitors'<sup>50</sup> can be seen to be part of the strategy

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<sup>47</sup> 'Unnecessary judicial interventions harmful to democracy- President', *The Island*, February 17, 2020.

<sup>48</sup> 'Politicians oppose travel ban on Army Commander', *News First*, February 15, 2020, <https://www.newsfirst.lk/2020/02/15/politicos-voice-objections-against-us-entry-ban-on-army-commander/>.

<sup>49</sup> 'Statement Made By Hon. Dinesh Gunawardena, Minister of Foreign Relations at the 43rd Session of the Human Rights Council', *Ministry of Foreign Affairs*, February 27, 2020, <http://www.mfa.gov.lk/statement-made-by-minister-of-foreign-relations-at-the-43rd-session-of-the-hrc-eng/>.

<sup>50</sup> 'UNHRC resolution: SL will withdraw; country divided between patriots and traitors—MR' *EconomyNext*, February 19, 2020, <https://economynext.com/>

to signal intolerance of dissent by the labelling of critics of the regime and dissenters as traitors and hence open to be subjected to de jure and de facto punitive measures. This form of labelling was used during the previous Rajapaksa regime as well and had a chilling effect on the freedom of expression.

The ability of human rights defenders and lawyers to engage without fear in their professions was called into question by the death threats made to Attorney-at-Law Achala Shanika Seneviratne. Seneviratne, who represents the families of the eleven young men who were abducted by Navy personnel and disappeared, lodged two complaints with the Criminal Investigation Department (CID) in May 2020 regarding the death threats that she was receiving on social media, in particular made by a group called 'Friends of the Police', in an attempt to stop her from 'legally representing many victims in cases of mass abduction, illegal detention, torture, and murder, where the accused are top security force members'. The CID has reportedly taken no action in response to her most recent complaint.<sup>51</sup>

### ***Militarisation***

Militarisation, which had been temporarily frozen during the Yahapalanaya regime, has been expanding in the Gotabaya Rajapaksa regime with the military playing an increased role in civilian affairs as well as law enforcement. For instance, the police was brought within the purview of the Ministry of Defence along with several other institutions, such as the NGO Secretariat, the National Media Centre, and the Government Information Department.<sup>52</sup> Military personnel, retired or in active service, were

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[unhrc-resolution-sl-will-withdraw-country-divided-between-patriots-and-traitors-mr-51893/](#).

<sup>51</sup> 'Sri Lanka: Female human rights lawyer facing continuous death threats', *Journalists for Democracy in Sri Lanka*, June 1, 2020, <http://www.jdslanka.org/index.php/news-features/human-rights/950-sri-lanka-female-human-rights-lawyer-facing-continuous-death-threats>.

<sup>52</sup> 'Institutions of Disaster Management moved under the purview of Defence', *News First*, December 11, 2019, <https://www.newsfirst.lk/2019/12/11/institutions-of-disaster-management-moved-under-the-purview-of-defence-ministry/>; Ministry of Defence, 'NGOs circumventing due procedures under scrutiny', June 2, 2020, [http://www.defence.lk/Article/view\\_article/1673](http://www.defence.lk/Article/view_article/1673).

appointed to head the Department of Customs, the Ministry of Health and the Ministry of Mahaweli, Agriculture, Irrigation and Rural Development.<sup>53</sup> In the North, the military was once again seen engaging in activities that are within the purview of civilian authorities, such as interviewing candidates for a recruitment drive for employment in the state sector.<sup>54</sup>

With increased militarisation and ‘visits’ to several civil society organisations in the North by officers of the CID and intelligence services, there is growing fear that dissent and activities of civil society organisations will be curtailed, potentially through restrictive legislation. In August, the government announced that it is drafting a new law which, reportedly, will contain provisions that restrict foreign funding to civil society organisations and stricter monitoring mechanisms.<sup>55</sup>

## **The Impact of Covid-19 on Civic Space and Minority Rights**

### ***Civic Space***

The government used the cover of the pandemic to further restrict civic space and extend and normalise executive overreach. For example, the government issued a notice under the direction of the Inspector General of Police (IGP) that strict action would be taken against those that ‘criticise’ state officials, point out ‘minor shortcomings/failures’, or ‘scold/chastise’ state officials performing their duties, thus in effect, curtailing free expression.<sup>56</sup>

The state exploited the restrictions in place during the lockdown to arrest and detain human rights defenders and persons seen as

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<sup>53</sup> Chaturanga Hapuarachchi, ‘President appoints seven ministry secretaries.’ *News First*, May 11, 2020, <https://www.newsfirst.lk/2020/05/11/president-appoints-seven-ministry-secretaries/>.

<sup>54</sup> Thinakkural, 27 Feb 2020.

<sup>55</sup> Skandha Gunasekera, ‘NGO finances to be regulated’. *The Sunday Morning*, 1 March 2020; <https://www.hrw.org/news/2020/07/29/sri-lanka-human-rights-under-attack>.

<sup>56</sup> ‘Freedom of Expression in Sri Lanka: “Revoke Your Directive & Use Existing Legal Provisions”, Civil Society Tell IGP (Acting)’, *Sri Lanka Brief*, April 8, 2020; Human Rights Watch, ‘Sri Lanka: Human Rights Under Attack’, July 29, 2020, <https://srilankabrief.org/2020/04/freedom-of-expression-in-sri-lanka-revoke-your-directive-use-existing-legal-provisions-civil-society-tell-igp-acting/>.

criticising the steps taken by the government to prevent the spread of Covid-19. The restriction on movement that was imposed during the countrywide lockdown from March to May 2020 to prevent the spread of Covid-19 adversely impacted the detainees who were unable to access legal representation and communicate with their families. There was minimal scrutiny of state action during this time due to the cessation in professional and civic activities, and hence swift action by civil society was not possible.

#### *Imposition and Implementation of Curfew*

In response to Covid-19, the government imposed a curfew and implemented a country-wide lockdown, but the curfew was not declared in accordance with the law, i.e., by the issuance of a gazette under Part II of the PSO.<sup>57</sup> Despite the fact there was no legally declared curfew, up to 56,000 persons were arrested and 13,556 vehicles were seized (as of May 2020).<sup>58</sup> While members of the public who were arrested were released on police bail, it is unclear if cases will be pursued against these persons.<sup>59</sup>

#### *Executive Overreach and Governance via Task Forces*

De-facto methods to consolidate executive power, and curtail civic space increased during the pandemic. For instance, in the guise of responding to the Covid-19 pandemic, the president used the broad powers assigned to him under Article 33 of the Constitution, to establish task forces, which in local parlance, is being referred to as ‘governance by task forces/committees’; the provision does not empower him to establish such bodies.

For instance, the task force on Economic Revival and Poverty Alleviation, established on 22 April 2020, is mandated to undertake

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<sup>57</sup> ‘TNA MP Sumanthiran writes to HRC seeking intervention to regularise “curfew”’, *Daily Financial Times*, May 4, 2020, <http://www.ft.lk/news/TNA-MP-Sumanthiran-writes-to-HRC-seeking-intervention-to-regularise-curfew/56-699679>.

<sup>58</sup> ‘More than 13,000 curfew violators arrested as Sri Lanka enters nationwide curfew’, *News First*, May 17, 2020. <https://www.newsfirst.lk/2020/05/17/more-than-13000-curfew-violators-arrested-as-sri-lanka-enters-nationwide-curfew/>.

<sup>59</sup> Ibid.



tasks that have to be performed by ministries and state officials.<sup>60</sup> Basil Rajapaksa, the founder of the SLPP and brother of the president and the prime minister, who does not hold any public office, nor is a state official, heads this task force. It is unclear why the membership of the task force, which includes the private sector, also has the Commander of the Army, the Acting Inspector General of Police, and the Director-General of the Civil Security Department officials, all persons who have no role to play in decision-making regarding poverty alleviation and economic recovery.<sup>61</sup>

Another example is the task force to Build a Secure Country, Disciplined, Virtuous and Lawful Society<sup>62</sup> established on 2 June 2020. This task force consists of military and police personnel, including the Commander of the Army, the Secretary of the Ministry of Defence, Chief of National Intelligence Services, the Director of State Intelligence Services, Directors of the Intelligence Services of the three armed forces, and the Acting Inspector General of Police. The task force is mandated to curb illegal activities and take measures to prevent ‘the drug menace’.

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<sup>60</sup> ‘Mega Task Force to revive Covid-19-hit economy.’ *Daily Financial Times*, April 23, 2020, <http://www.ft.lk/top-story/MegaTask-Force-to-revive-Covid-19-hit-economy/26-699130>.

<sup>61</sup> ‘Prez appoints Task Force for economic revival and poverty alleviation.’ *The Morning*, April 22, 2020, <http://www.themorning.lk/prez-appoints-task-force-for-economic-revival-and-poverty-alleviation/>.

<sup>62</sup> ‘Sri Lanka President appoints a Presidential Task Force to build a secure country, virtuous society.’ *Colombo Page*, June 3, 2020.

The extensive powers and broad mandates of these task forces raise issues of accountability and transparency since these are ad-hoc bodies with far-reaching powers that seem to mandate them to take the lead in several matters that should be within the purview of state agencies, such as ministries. Further, they could impinge upon and even usurp the mandate, powers, and functions of other legally established institutions, such as the Attorney-General's Department and the Department of Prisons, creating confusion and conflict between the two bodies.<sup>63</sup>

### *Militarisation*

The other factor impinging upon democratic governance is increased and rapid militarisation of the response to Covid-19, with the Commander of the Army heading the National Operation Centre for the Prevention of the Covid-19 Outbreak, and the military running quarantine camps and undertaking contact tracing. Military presence can be seen to be seeping into other areas of civilian administration as well. While the military has a key role to play in responding to humanitarian crises, such as a pandemic, in a democracy, their role should be subordinate to civilian authorities and they should always take directives from civilian authorities.

The Disaster Management Centre (DMC), which has a Director-General who is a retired senior military official, is within the purview of the Ministry of Defence and, according to the Secretary of Defence, 'has its own mechanism to work in coordination with Government Agents, Assistant Government Agents, Divisional Secretaries and Grama Sevaka in all districts and divisions' to distribute relief.<sup>64</sup> This illustrates the militarisation of disaster management and the provision of relief. Civilian leadership of Covid-19 responses also requires that civilian authorities/public

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<sup>63</sup> 'The Appointment of the two Presidential Task Forces—Discussion Paper.' *Centre for Policy Alternatives*, June 2020, <https://www.cpalanka.org/the-appointment-of-the-two-presidential-task-forces/>.

<sup>64</sup> Ambika Satkunanathan, 2020, 'Inequality Redux: Reviewing Sri Lanka's Chronic Democracy Deficit in the Context of Covid-19', *Common Views*, April 28, 2020, <http://www.commonviews.org/inequality-redux-reviewing-sri-lankas-chronic-democracy-deficit-in-the-context-of-Covid-19/>.

health officials should be responsible for the dissemination of information to the public, such as conducting press conferences. In Sri Lanka, senior military officials give interviews and even provide information to the public, independent of public health officials or other civilian authorities.

In the ongoing militarisation and normalising military involvement in civilian affairs, the Sri Lanka Army has begun engaging in law enforcement activities in the North.<sup>65</sup> It has also opened a 'harmony centre' in Jaffna, purportedly for the 'promotion of durable peace, reconciliation, cooperation and well-being of the community in the Jaffna peninsula'.<sup>66</sup>

### ***The Rights of Ethno-Religious Minorities***

Using the broad powers under Article 33 of the Constitution, the president also established a task force for Archaeological Heritage Management in the Eastern Province. Although the focus of the task force is the multi-ethnic Eastern Province, the membership of the task force is entirely mono-ethnic. Further, its members include the Secretary of the Ministry of Defence, the Deputy Inspector-General of the Western Province, a Buddhist monk who has been vocal about his anti-minority views, and the owner of a private media network and businessman who is a known close associate of the president and spearheaded his election campaign. It is a cause for concern that these persons who are not public officials would be in a position to not only make public policy on sensitive issues but also issue directives to public officials.<sup>67</sup> Further, the task force, like others, is accountable only to the president and is not required to function in a transparent manner. The president appointed four more Buddhist monks to the task force on 24 August 2020.<sup>68</sup>

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<sup>65</sup> 'Sri Lankan police arrest Tamil youth for "regrouping the LTTE,"' *Tamil Guardian*, July 1, 2020, <https://www.tamilguardian.com/content/sri-lankan-police-arrest-tamil-youth-%E2%80%98regrouping-ltte%E2%80%99>.

<sup>66</sup> "Harmony Centre" for Utility Community-Oriented Projects Inaugurated in KKS, Jaffna' *Sri Lanka Army*, May 12, 2020, <https://www.army.lk/news/harmony-centre-utility-community-oriented-projects-inaugurated-kks-jaffna>.

<sup>67</sup> 'The Appointment of the two Presidential Task Forces—Discussion Paper.' *Centre for Policy Alternatives*, June 2020. <https://www.cpalanka.org/the-appointment-of-the-two-presidential-task-forces/>.

<sup>68</sup> 'Four more monks appointed to Task Force on Archaeological Management

The membership of Buddhist monks and military personnel in the task force highlights the manner in which the military and the Buddhist clergy are an integral part of the land-acquisition process by designating any property as archaeological land. In an interview in late June 2020, Ellawela Medhananda Thero, one of the Buddhist monks on the task force, said there is nothing wrong in including the military in civilian affairs; the Eastern Province is not a historical area of habitation of Tamils and that all archaeological sites in East are Sinhala-Buddhist.<sup>69</sup> This illustrates the deeply communal, militarised approach that will likely be taken by the task force.

While there has been little state action to stem or counter the incitement of hatred against Muslims or provide reassurance of security and equal enjoyment of rights to minority communities in Sri Lanka, the president's remarks during his meeting with the Maha Sangha on 24 April 2020, which were widely reported in the media, are troubling. He reportedly remarked that although it is not a secret that he won the presidential election due to the votes of the Sinhala majority, he had pledged to serve everyone regardless of this fact since he is duty-bound to do so. He, however, further stated that despite his pledge there are conspiracies to make him fail and create a constitutional crisis by dragging him to court. Discussing constitutional matters with the Sangha and seeking their advice on matters of governance, while blaming mainly minority politicians of precipitating a constitutional crisis through their calls for the reconvening of the parliament, illustrates a majoritarian, ethno-nationalist, and patronage-based view of governance. This type of blatant disregard for a secular system of governance that is based on the respect for the rule of law and diversity dissuades citizens to hold those that govern them to account without fear of reprisals.

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in East | Colombo Gazette', *Colombo Gazette*, August 25, 2020, <https://colombogazette.com/2020/08/25/four-more-monks-appointed-to-task-force-on-archaeological-management-in-east/>.

<sup>69</sup> 'Understanding Press Coverage on Religious Freedom, June 2020', Minormatters.org, <https://www.minormatters.org/storage/app/uploads/public/5f2/3d4/a12/5f23d4a12f332037841699.pdf>.



### ***Muslim Community***

The stigmatisation and scapegoating of Muslims have taken many forms, including senior state officials blaming the community for the spread of Covid-19 and the community being denied the right to bury those who die of Covid-19 as per their religious practice.

The denial to bury the dead is being done in contravention of WHO Interim Guidance dated 24 March 2020 on Infection Prevention and Control for the Safe Management of a Dead Body in the Context of Covid-19, which states that ‘cadavers do not transmit disease’ and that ‘people who have died from Covid-19 can be buried or cremated’. To date, at least four Muslims who died of Covid-19 have been cremated against their families’ religious views and choices. In one instance, the person was cremated without verifying whether she was infected with Covid-19.<sup>70</sup> Five fundamental rights applications have been filed in the Supreme Court to recognise the right of Muslims to bury those who die of Covid-19.

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<sup>70</sup> Shereena Qazi and Ashkar Thasleem, ‘Anguish as Sri Lanka forces Muslims to cremate Covid-19 victims’, *Al Jazeera*, April 3, 2020, <https://www.aljazeera.com/news/2020/04/anguish-sri-lanka-forces-muslims-cremate-Covid-19-victims-200403053706048.html>.

The incitement of hatred by and outpouring of vitriol on media outlets continued unabated despite Defence Secretary Kamal Gunaratne stating that '[w]e have instructed the Police and other agencies handling fake news to take stern legal action against rumour mongers and some have already been taken into custody'.<sup>71</sup> For example, Muslim Covid-19 patients were identified by their faith, unlike other patients, and blamed by the media for spreading the coronavirus. While no action has been taken against popular TV stations that promote hate speech and peddle misinformation, there have been reports of arrests of citizens who criticise the action or inaction of state officials, as illustrated in previous sections. It should be noted that Secretary Gunaratne's statement was made only after media reports of a Covid-19 cluster being found in the Navy led to the stigmatisation and harassment of families of Navy personnel.

Two particular arrests during the pandemic are a cause for deep concern as these persons appear to have been targeted due to their religion, and their professional duties and civic activism.

The CID arrested Hejaaz Hizbullah, a lawyer, on 14 April 2020. Initially Hizbullah had limited access to his lawyers in restricted circumstances for about fifteen minutes in the presence of a CID officer. Hizbullah was not informed of the reason for the interrogation or the arrest, thereby violating his due process rights. Before Hizbullah was informed of the reason for his arrest, the police convened a press conference on 15 April 2020 at which they stated he was arrested in relation to the Easter attacks of April 2019. As of 1 July 2020, Hejaaz Hizbullah remains in administrative detention without being charged. While the CID is said to be 'looking for sufficient information against' him, there have been reports of CID officers engaging in malpractice and coercing minors to make false statements against Hizbullah.<sup>72</sup>

<sup>71</sup> 'Prompt intervention of military and police reduced impact of Covid-19 -Defence Sec. Maj. Gen. (Retd) Kamal Gunaratne.' *The Sunday Observer*, April 19, 2020.

<sup>72</sup> 'CID attempted to show photograph of Hejaaz to children before ID parade: Fort Magistrate.' *Daily Financial Times*, June 26, 2020, <http://www.ft.lk/news/CID-attempted-to-show-photograph-of-Hejaaz-to-children-before-ID-parade-Fort-Magistrate/56-702226>; 'Sri Lanka: ICJ raises concerns about the arbitrary arrest and detention of lawyer Hejaaz Hizbullah; calls for repeal and replacement of the Prevention of Terrorism Act', *International Commission of Jurists*, April 21, 2020,

Ramzy Razeek is a former public servant and a regular commentator on issues of human rights, justice, and racism to which the Muslim community was being subjected. On 3 April 2020, through a social media post, he urged the Muslim community to engage in 'ideological jihad' using the pen and keyboard to shed light on the truth regarding anti-Muslim propaganda. Due to the misunderstanding that surrounds the concept of jihad, the social media post was met with an outpouring of hate and threats directed at him and his family. On 9 April 2020, Razeek lodged a police complaint regarding the threats made against him and his family. Later that day, he was arrested by CID officers instead for the offence of inciting racial hatred under the ICCPR Act, which does not allow suspects to be released on bail. As of 31 August 2020, Razeek remains in custody and has allegedly been denied access to medical care and a legal representative.<sup>73</sup>

### ***Tamil Community***

During the curfew period, there were increased checkpoints in the Northern Province, unlike in other parts of the country, and it was reported that persons travelling out of the North were required to obtain military clearance in addition to Covid-19-related medical clearance.<sup>74</sup>

### ***Dealing with the Past***

Accountability for war-related human rights violations was dealt a blow with the presidential pardon of Sergeant Sunil Rathnayake who was convicted in 2015 of the murder of eight Tamil civilians

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<https://www.icj.org/sri-lanka-icj-raises-concerns-about-the-arbitrary-arrest-and-detention-of-lawyer-hejaaz-hizbullah-calls-for-repeal-and-replacement-of-the-prevention-of-terrorism-act/>.

<sup>73</sup> Z. L. Mohamed, 2020, 'Ramzy Razeek: An extraordinary struggle for an ordinary life of service upended by a Police arrest', *Daily Financial Times*, May 9, 2020, <http://www.ft.lk/opinion/Ramzy-Razeek-An-extraordinary-struggle-for-an-ordinary-life-of-service-upended-by-a-Police-arrest/14-699917>; 'Sri Lanka: Due Process Concerns in Arrests of Muslims', *Human Rights Watch*, April 23, 2020, <https://www.hrw.org/news/2020/04/23/sri-lanka-due-process-concerns-arrests-muslims>.

<sup>74</sup> 'Tamils in North East struggle with curfew hardships due to state negligence', *Tamil Guardian*, April 2, 2020, <https://www.tamilguardian.com/content/tamils-north-east-struggle-curfew-hardships-due-state-negligence>.

who were internally displaced, including three children of ages five, thirteen, and fifteen years, in Mirusuvil, Jaffna, on 19 December 2000 while on active duty.<sup>75</sup>

Where the plight of thousands of disappeared persons is concerned, President Rajapaksa in a meeting in January 2020 with the UN Resident Coordinator stated that the thousands of missing persons are dead. He further said, 'Most of them had been taken by the LTTE or forcibly conscripted. The families of the missing attest to it. However, they do not know what has become of them and so claim them to be missing'. The president stated that after the 'necessary investigations' death certificates would be issued and the families of the missing would be provided support.<sup>76</sup>

Tamils in the North were prevented from memorialising those who were killed during the last stages of the armed conflict in May 2009, with the police and military disrupting many events.<sup>77</sup> In one instance, the police cited quarantine requirements<sup>78</sup> and obtained a court order to prevent members of the Tamil National People's Front (TNPF) from holding a commemoration event in Jaffna. However, on the same day, the government held an event with the participation of certain members of the government, the armed forces, and some families of soldiers to commemorate the War Heroes Day in Colombo.<sup>79</sup> During this period, it was also reported that the police allegedly threatened a TNPF member who claimed the army threatened to shoot her if she lit lamps to commemorate those killed in May 2009.<sup>80</sup>

<sup>75</sup> Ambika Satkunanathan, 2020. 'Justice in the time of a pandemic.' *Groundviews*, March 29, 2020, <https://groundviews.org/2020/03/29/justice-in-the-time-of-a-pandemic/>; Al Jazeera, 'Sri Lanka pardons soldier who killed Tamil civilians.' *Al Jazeera*, March 27, 2020, <https://www.aljazeera.com/news/2020/03/sri-lanka-pardons-soldier-killed-tamil-civilians-200327033617104.html>.

<sup>76</sup> Meera Srinivasan, 'Sri Lanka civil war: Missing persons are dead, says Gotabaya' *The Hindu*, January 20, 2020, <https://www.thehindu.com/news/international/missing-persons-are-dead-says-gotabaya/article30609730.ece>.

<sup>77</sup> 'Sri Lankan soldiers stamp out Mullivaikkal remembrance flame in Jaffna', *Tamil Guardian*, May 18, 2020, <https://www.tamilguardian.com/content/sri-lankan-soldiers-stamp-out-mullivaikkal-remembrance-flame-jaffna>.

<sup>78</sup> Ibid.

<sup>79</sup> 'Sri Lanka prepares to mark victory with military 'promotion bonanza.' *Tamil Guardian*, May 18, 2020, <https://www.tamilguardian.com/content/sri-lanka-prepares-mark-victory-military-%E2%80%98promotion-bonanza%E2%80%99>.

<sup>80</sup> "If you light lamps, the army will shoot you"—Sri Lankan police warn TNPF member' *Tamil Guardian*, May 17, 2020, <https://www.tamilguardian.com>.

On 30 August 2020, the police in Batticaloa in the Eastern Province obtained a court order to prevent families of the disappeared from commemorating the International Day of the Victims of Enforced Disappearances.<sup>81</sup> One of the reasons the police provided when seeking the order is that the gathering would contribute to the revival of the Liberation Tigers of Tamil Eelam (LTTE). This illustrates that the revival of the LTTE continues to be used by the state to curtail civic activism more than a decade after the end of hostilities and government-celebrated military defeat of the armed group.

### **Conclusion**

Ethno-religious minorities have faced discrimination, marginalisation, and violence in Sri Lanka, with different groups becoming 'the other' at different periods of the country's history. Although during the Yahapalanaya regime, there was freedom of speech and civil society organisations and human rights defenders were able to function freely and challenge the state without fear of reprisals, the government failed to address many structural and systemic issues, including the root causes of ethnic conflict. That failure in the face of propagation of hate and incitement of violence against minorities created a space for Sinhala-Buddhist nationalist groups to engage in communal politics, including violence, with impunity. Lack of accountability for those who engaged in violence led to the entrenchment of impunity and diminished the chances of past violations being addressed in a meaningful way. Other factors that enabled the quick reversion to a militarised and authoritarian form of government include the failure to demilitarise and undertake institutional reforms and strengthen checks and balances.

After the presidential election of November 2019, the Rajapaksa government, which openly subscribes to a Sinhala-Buddhist nationalist ideology, re-initiated a process of rapid militarisation and began using extra-legal structures to govern, relying on the

[com/content/%E2%80%98if-you-light-lamps-army-will-shoot-you%E2%80%99-%E2%80%93-sri-lankan-police-warn-tnpf-member](https://www.tamilnet.com/art.html?catid=13&artid=39936)

<sup>81</sup> 'Families of war-disappeared send strong message braving SL restrictions on International Day', *Tamil Net*, August 31, 2020, <https://www.tamilnet.com/art.html?catid=13&artid=39936>.

lack of a strong opposition, as the largest political party maintained silence on critical governance and rights issues. The arbitrary use of the law to justify violations of minority rights escalated post-November 2019.

While the crackdown on dissent and restrictions on civil liberties and civic space, and curb on the rights of ethno-religious minorities was a predicted outcome of the Rajapaksa presidency, the pandemic enabled accelerated militarisation and the introduction of authoritarian policies and processes. Lack of a functioning parliament and executive rule through ad-hoc mechanisms for nearly five months during the pandemic contributed to undermining democracy and normalised executive overreach, which had begun soon after the presidential election. During this period the arrests of civic activists and assaults on the rights of minorities, both through hate speech as well as through state action and inaction, increased the insecurity of both ethno-religious minorities as well as civil society groups, with self-censorship due to fear of state reprisals becoming increasingly common. In this context, civil society engaged in countering restrictions on civil liberties and civic space and advocating for the protection of the rights of ethno-religious minorities are likely to face greater obstacles and challenges in the future.

## **Recommendations**

### *To the government of Sri Lanka*

- i. Ensure that freedom of expression and association are respected and individuals and institutions are able to dissent freely without fear of state reprisals.
- ii. Do not use the law as a tool to suppress dissent or curb civic activities that are critical of the government. The law should not be arbitrarily applied in a manner that discriminates against and violates the rights of ethno-religious minorities.
- iii. Create an environment in which ethno-religious minorities are able to fully exercise and enjoy their rights without insecurity or fear of violence. In particular, the government should refrain from acts that are and appear

to be majoritarian and biased against ethno-religious minorities.

- iv. Ensure that the state institutions and officials adhere to the constitutional provisions on equality; action should be taken against those that discriminate on the basis of ethnicity or religion.
- v. Hold those that engage in propagating or advocating racial hatred that constitutes incitement to discrimination or violation accountable to the fullest extent of the law.
- vi. Refrain from using extra-legal mechanisms and processes, such as the presidential task forces, to undermine civic space and the rights of ethno-religious minorities.
- vii. View civil society as an integral part of a functional and robust democracy and not as a foe/antagonist.

*To civil society*

- i. Recognise the intersectionality of issues and build broad alliances founded on the basis of common interest.
- ii. Ensure that community-based organisations, especially those outside Colombo and in the non-urban areas, are included in dialogues and common interventions, and be proactive in seeking their participation and contribution.
- iii. Build alliances with regional civil society organisations and networks and learn from the successful strategies they used.

*To the international community*

- i. Re-iterate to the government, the importance of a robust civic space and the need to ensure that the rights of ethno-religious minorities are protected. All international community- and UN-supported initiatives, whether with government or civil society, should be based on these principles.
- ii. Expand and strengthen the relationship with civil society, in particular, engage with smaller organisations working outside Colombo at the community level.
- iii. Pay attention to the protection needs of civil society organisations and provide required support in a flexible manner in line with the changing context.

# State of South Asian Minorities 2020

Shahnaaz Khan

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## Afghanistan

Islam is the official state religion of Afghanistan as recognised by the 2004 Constitution. Religious freedom is allowed within the bounds of the law, leaving room for minority communities to be targeted under blasphemy law and other religiously motivated cases. The past year, too, continued to witness the trend of acts of violence targeting the country's religious and ethnic minorities.

The Shia Hazara community has been especially targeted under the Taliban rule. There were series of attacks in 2019 against a Shia shrine,<sup>1</sup> a mosque,<sup>2</sup> and also a wedding reception of a Shia couple in Kabul.<sup>3</sup> On 6 March 2020, a gathering of Shia Hazaras in Kabul was attacked by armed gunmen, who killed at least 32 people and injured 82 others.<sup>4</sup> The congregation was commemorating the 1995 slaying of Abdul Ali Mazari, the leader of the Hazara community.

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1 Amir Shah, 'Bombs Target Afghan Shiites marking new year, killing 6', *AP News*, March 21, 2019, <https://apnews.com/5cda1c472d654c3391fec88cd8c993ed>.

2 Reuters, 'Islamic State says it carried out attack at Shi'ite mosque in central Afghanistan', *Reuters*, July 6, 2019, <https://www.reuters.com/article/us-afghanistan-blast/islamic-state-says-it-carried-out-attack-at-shiite-mosque-in-central-afghanistan-idUSKCN1U109O>.

3 CBS News, 'Islamic State claims responsibility for bombing at Kabul wedding that killed 63', *CBS News*, August 18, 2019, <https://www.cbsnews.com/news/afghanistan-bombing-islamic-state-claims-responsibility-for-bombing-at-kabul-wedding-that-killed-63>.

4 Al Jazeera, 'Dozens killed in Kabul ceremony attack claimed by ISIL', *Al Jazeera*, March 6, 2020, <https://www.aljazeera.com/news/2020/03/kabul-gathering-attended-abdullah-hit-rocket-attack-report-200306074951081.html>.

ISIS claimed responsibility for the attack.<sup>5</sup> On 12 May, a group of gunmen disguised in Afghan police uniforms stormed a maternity ward in a residential neighbourhood in Kabul, largely comprising of the Shia Hazara members.<sup>6</sup> According to reports, the attack was carried out by IS-Khorasan, a local affiliate of the Islamic State.<sup>7</sup>

Sikhs are another group to face several attacks during the period under review. On March 25, 2020, gunmen associated with ISIS stormed a Sikh gurdwara in Kabul, firing and lobbing grenades at worshippers and killing 25 people, including women and children.<sup>8</sup> The next day, at the funeral of the deceased, a bomb exploded, injuring several other members of the community in attendance. On 22 June, Nidan Singh Sachdeva, an Afghan Sikh community leader, was abducted by unidentified persons from a gurdwara in the Paktia province in south-eastern Afghanistan.<sup>9</sup> Sachdeva was eventually released from captivity unharmed, due to efforts made by the Afghan government and local tribal elders. In July 2020, a 13-year-old Sikh girl was allegedly lured for marriage by a Muslim man, and was rescued after a local cleric informed the police.<sup>10</sup> The abduction was possibly for forced conversion of the girl to Islam, a common occurrence in the country.

Political tensions over the contested 2019 presidential election amid growing insecurity, uncertainties surrounding the current

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<sup>5</sup> Ibid.

<sup>6</sup> BBC, 'Afghan attack: Babies killed as gunmen storm Kabul maternity ward', *BBC*, 12 May 2020, <https://www.bbc.com/news/world-asia-52631071>.

<sup>7</sup> Ibid; Kathy Gannon and Tameem Akhgar. 2020. 'US blames deadly Afghan maternity hospital attack on ISIS-K.' *Military Times*, May 15, 2020, <https://www.militarytimes.com/news/2020/05/15/us-blames-deadly-afghan-maternity-hospital-attack-on-isis-k>.

<sup>8</sup> BBC, 'Afghanistan conflict: Militants in deadly attack on Sikh temple in Kabul', *BBC*, March 25, 2020, [https://www.bbc.com/news/world-asia-52029571?SThisFB&fbclid=IwAR2Zkicfm06nMYXAb2dEh9nGVTpiQ26bH6qgiFLF\\_IkspfvFGK87pnQxTs](https://www.bbc.com/news/world-asia-52029571?SThisFB&fbclid=IwAR2Zkicfm06nMYXAb2dEh9nGVTpiQ26bH6qgiFLF_IkspfvFGK87pnQxTs).

<sup>9</sup> Hindustan Times, 'Sikh community leader Nidan Singh Sachdeva released from captivity in Afghanistan', *Hindustan Times*, July 18, 2020, <https://www.hindustantimes.com/india-news/sikh-community-leader-nidan-singh-sachdeva-released-from-captivity-in-afghanistan/story-Bi54Y6yDzPTRngp2SbC3eJ.html>.

<sup>10</sup> Yudhvir Rana, 'Afghan cleric saved minor Sikh girl "abducted" by a Muslim boy', *The Times of India*, July 20, 2020, <https://timesofindia.indiatimes.com/india/afghan-cleric-saved-minor-sikh-girl-abducted-by-a-muslim-boy/articleshow/77070211.cms>.

peace talks with the Taliban, and the Covid-19 pandemic have further worsened the situation for the country's minorities. The spate of killings, and authorities' inability to respond, hold the perpetrators accountable, and prevent further attacks have made things worse for Afghanistan's persecuted minorities. The country continues to deal with uncertainties, with delay in the intra-Afghan peace talks between the political leadership in Kabul, and Taliban. At the time of writing, September 2020, the two groups are preparing to start the talks with efforts underway to finalise a date.<sup>11</sup>

The US-Taliban agreement on 29 February 2020 on withdrawal of US forces in phases does not seem to indicate that the country is ready to emerge from decades of divisionary politics. A Human Rights Watch Report from June 2020 has documented low freedom of expression and social restrictions in the country, especially in Taliban-held areas.<sup>12</sup> The 'vice and virtue' police continue to operate in these areas, with strict adherence to the Taliban-prescribed social norms. These norms are especially discriminatory to religious and ethnic minority groups. Thus, despite the peace process, the country's minorities are choosing to either relocate or live hiding any visually distinctive identity markers, according to the USCIRF 2020 report.<sup>13</sup>

## Bangladesh

There continued to be internal and external security threats toward minorities in the country. Internally, several attacks were reported against religious minorities. Externally, events surrounding the National Register of Citizens and the Citizenship Amendment Act in India continued to stoke fears of disruption of peace in the

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<sup>11</sup> Khalid Nekzad, 'Reconciliation Council Expects Taliban to Get Ready for Talks', *Tolo News*, September 5, 2020, <https://tolonews.com/index.php/afghanistan/reconciliation-council-expects-taliban-get-ready-talks>.

<sup>12</sup> Human Rights Watch, "You Have No Right to Complain": Education, Social Restrictions, and Justice in Taliban-held Afghanistan', *Human Rights Watch*, June 30, 2020, <https://www.hrw.org/report/2020/06/30/you-have-no-right-complain/education-social-restrictions-and-justice-taliban-held>.

<sup>13</sup> US Commission on International Religious Freedom, *Annual Report 2020* (Washington DC: USCIRF, 2020) 48-50.

country. Rohingya refugees from Myanmar were also the victims of a number of attacks, which the state was unsuccessful in curbing.

A number of instances of violence against Rohingya refugees have been the result of confrontation with the law enforcement agencies. In August 2019, four Rohingya men were killed in encounters with law enforcement agencies and one arrested for the alleged murder of a Bangladeshi man. UN Human Rights experts expressed concern over the rights of the refugees when restrictions over them were put in place and military presence increased in the Cox's Bazaar camp following a 'Genocide Day' protest.<sup>14</sup> In June 2020, four more Rohingya men were killed extrajudicially near the camp for alleged involvement in a kidnapping for ransom.<sup>15</sup> Earlier in March, the police had fatally shot seven men suspected of drug dealing and human trafficking.<sup>16</sup>

Refugees have also attempted to seek asylum in other countries such as Malaysia, undertaking perilous sea journeys in the midst of the Covid-19 pandemic. In one such attempt in April 2020, 30 refugees died at sea; a Rohingya community leader attributed this to increasing desperation in the camps as stricter lockdowns were imposed, including a recent block on movement and mobile internet, which was enticing more refugees to reach out to traffickers for a way out.<sup>17</sup> The UN High Commissioner for Human Rights urged Bangladesh to continue to provide protection to the refugees, and also facilitate their free access to information and

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<sup>14</sup> 'Bangladesh: UN experts concerned by crackdown at Rohingya refugee camps', United Nations Human Rights Office of the High Commissioner, last modified September 16, 2019, <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=24994&LangID=E>.

<sup>15</sup> Hindustan Times, '4 Rohingya men killed in gunfight with Bangladesh police', *Hindustan Times*, June 27, 2020, <https://www.hindustantimes.com/world-news/4-rohingya-men-killed-in-gunfight-with-bangladesh-police/story-a2Qh10fUWWHVmqiR3Q7d0J.html>.

<sup>16</sup> The Daily Star, 'Seven killed in a single "gunfight"', *The Daily Star*, March 3, 2020, <https://www.thedailystar.net/frontpage/news/gunfight-rab-teknaf-seven-rohingya-robbers-killed-1875505>.

<sup>17</sup> The Guardian, 'Bangladesh rescues hundreds of Rohingya drifting at sea for nearly two months', *The Guardian*, April 16, 2020, <https://www.theguardian.com/world/2020/apr/16/bangladesh-rescues-hundreds-of-rohingya-drifting-at-sea-for-nearly-two-months>.

communication,<sup>18</sup> which is yet to see fruition. Following reports on the denial of education to the Rohingya children living in camps, the government, however, approved a ‘pilot’ education program to give 10,000 Rohingya children access to formal school curriculum.<sup>19</sup>

The Ahmadiya community also faced targeted attacks, with Islamist groups demanding that they be declared non-Muslims.<sup>20</sup> On 13 September 2019, an Ahmadiya mosque under construction in Netrakona was allegedly vandalised by students from nearby madrassahs.<sup>21</sup> Another Ahmadiya mosque was attacked on 14 January 2020 in Brahmanbaria town with an altercation between students from a local madrasa and Ahmadiyas at the mosque.<sup>22</sup> In another bizarre incident, the corpse of an Ahmadiya infant buried in a public Muslim graveyard was exhumed and left by a road in Brahmanbaria district’s Ghatara village.<sup>23</sup> The Islamic Oikko Jote (Islamic Unity Alliance), the biggest alliance of Islamic organisations in Bangladesh, reiterated its stance that members of the Ahmadiya community should never be allowed in Muslim graveyards, and accused the baby’s family of deliberately trying to stoke tensions.<sup>24</sup>

Members of Bangladesh’s indigenous communities also continue being targeted. Amid the Covid-19 pandemic, seven indigenous

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18 ‘Press briefing note on Myanmar/Bangladesh–Rohingya’, United Nations Human Rights Office of the High Commissioner, last modified April 17, 2020, <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=25804&LangID=E>.

19 Human Rights Watch, ‘“Are We Not Human?”: Denial of Education for Rohingya Refugee Children in Bangladesh’, *Human Rights Watch*, December 3, 2019, <https://www.hrw.org/report/2019/12/03/are-we-not-human/denial-education-rohingya-refugee-children-bangladesh>.

20 ‘General Briefing: Bangladesh’, CSW, last modified May 1, 2020, <https://www.csw.org.uk/2020/05/01/report/4636/article.htm>.

21 New Age Bangladesh, ‘Under-construction Ahmadiyya mosque vandalised in Netrakona’, *New Age Bangladesh*, September 15, 2019, <https://www.newagebd.net/article/84607/under-construction-ahmadiyya-mosque-vandalised-in-netrakona>.

22 Dhaka Tribune, ‘Ahmadiyya mosque vandalized in Brahmanbaria’, *Dhaka Tribune*, January 16, 2020, <https://www.dhakatribune.com/bangladesh/nation/2020/01/16/ahmadiyya-mosque-vandalized-in-brahmanbaria>.

23 Dhaka Tribune, ‘Ahmadiyya infant exhumed, left by the road in Brahmanbaria’, *Dhaka Tribune*, July 10, 2020, <https://www.dhakatribune.com/bangladesh/nation/2020/07/10/ahmadiyya-infant-exhumed-and-left-by-the-road-in-brahmanbaria>.

24 Ibid.

peoples of the Chittagong Hill Tracts region have reportedly been arrested arbitrarily, and 13 persons have reportedly been tortured and harassed.<sup>25</sup> In Bandarban Hill district in May, land grabbers allegedly linked to the ruling party burned down around 5000 acres of rubber plantations of the indigenous people.<sup>26</sup>

Attacks on religious minorities were also reported during the Covid-19 shutdown. Houses of religious minorities were attacked, and cases of temples being vandalised were also reported.<sup>27</sup> The Bangladesh Election Commission's decision to conduct mayoral elections of Dhaka South and North City constituencies on 30 January resulted in widespread agitations, as the date clashed with Saraswati Puja, a major Hindu festival.<sup>28</sup> With the Commission refusing to budge, Hindu activists approached the High Court, which refused to entertain its plea for postponement of polls. With the student-led protests intensifying, however, the EC eventually relented and deferred the polling date.<sup>29</sup>

The state has taken some steps towards curbing terrorism and religious violence. In February 2020, Bangladesh Police foiled a planned attack on a Hindu temple in Dhaka. The Counter Terrorism and Transnational Crime Unit arrested five members of the extremist group Ansar al-Islam for plotting the attack.<sup>30</sup> Following the communal riots in the capital of India, in February, Bangladeshi leadership also called for peace and harmony to be maintained. In Dhaka, the leaders of Hefazat-e-Islam, an advocacy group, urged Muslims to maintain communal peace and harmony and protect the country's non-Muslims.<sup>31</sup>

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<sup>25</sup> Trimita Chakma, *A Rapid Assessment Report The impact of COVID-19 on Indigenous and Tribal Peoples in Bangladesh* (Dhaka: Kapaeeng Foundation, 2020).

<sup>26</sup> Ibid.

<sup>27</sup> The Daily Star, 'Minority and ethnic communities attacked during lockdown', *The Daily Star*, June 2, 2020, <https://www.thedailystar.net/editorial/news/minority-and-ethnic-communities-attacked-during-lockdown-1907501>.

<sup>28</sup> The Daily Star, 'Dhaka city polls date changed to Feb 1', *The Daily Star*, January 18, 2020, <https://www.thedailystar.net/city/dhaka-city-election-date-changed-february-1-1855774>.

<sup>29</sup> Ibid.

<sup>30</sup> Dhaka Tribune, '5 Ansar-al-Islam members held in Dhaka', *Dhaka Tribune*, February 10, 2020, <https://www.dhakatribune.com/bangladesh/dhaka/2020/02/10/5-ansar-al-islam-members-held-in-dhaka-2>.

<sup>31</sup> New Age Bangladesh, 'Thousands protest against Delhi violence', *New*

However, the country's legal framework is often misused, and has the potential to be misused to target minorities. The United States Commission for International Freedom, in its 2020 Annual Report, noted that Bangladesh's controversial Digital Security Act, which criminalises content that hurts 'religious sentiment or values', has been repeatedly misused in the country.<sup>32</sup> Folk singer Shariat Bayati was arrested in January 2020 under the Act for stating that music is not forbidden in the Quran.<sup>33</sup>

## Bhutan

The Constitution of the Kingdom of Bhutan 2008 guarantees the rights of citizens to civil liberties, including the freedom of expression, association and the right to follow one's religion. However, issues of minorities do not receive any national attention and even if some issues emerge and are noticed in the public domain, there are no civil society groups that can effectively take up and advocate on the issues. The National Human Development Report 2018 also states that the government has restricted civil liberties 'to avoid breaches of peace' in soliciting applications for licenses and prohibiting assembly in designated places also reinforced by the Penal Code of Bhutan which prohibits promotion of civil unrest.<sup>34</sup> The Human Rights Report 2018 also notes that citizens in Bhutan were careful when exercising freedom of expression as they could be charged with defamation, especially if they criticise powerful persons in the country.<sup>35</sup>

*Age Bangladesh*, February 28, 2020, <https://www.newagebd.net/article/100773/thousands-protest-against-delhi-violence-in-dhaka>.

<sup>32</sup> US Commission on International Religious Freedom, *Annual Report 2020* (Washington DC: USCIRF, 2020).

<sup>33</sup> *New Age Bangladesh*, 'AI wants unconditional release of Shariat Bayati', *New Age Bangladesh*, February 15, 2020, <https://www.newagebd.net/article/99644/ai-wants-unconditional-release-of-shariat-bayati>.

<sup>34</sup> United Nations Development Program, *Bhutan National Human Development Report: Ten Years of Democracy in Bhutan* (Thimphu: UNDP, 2019), [https://www.bt.undp.org/content/bhutan/en/home/library/human\\_development/national-human-development-report-2019.html](https://www.bt.undp.org/content/bhutan/en/home/library/human_development/national-human-development-report-2019.html).

<sup>35</sup> United Nations Human Rights Office of the High Commissioner, *Human Rights Report* (Geneva: OHCHR, 2018) <https://www.ohchr.org/Documents/>

Over the years, CSOs in Bhutan have faced several constraints due to legislation which deters CSOs from taking up certain activities. For example, the Civil Society Organisation Act 2007 is silent about the advocacy function and role of CSOs.<sup>36</sup> Moreover, any advocacy taken up by CSOs may be construed as a 'political' activity which the Act rules that CSOs cannot indulge in. This opaqueness and fear deter any advocacy work by CSOs in support of the issues faced by their target group.

According to Freedom House Report 2018, there are multiple media houses but all of them are dependent on the government for income from advertisements.<sup>37</sup> This is true at present as well. An amended Bhutan Information, Communications, and Media Act was passed in 2018,<sup>38</sup> which calls for strengthening the independence of the media for a free and vibrant fourth estate. A Media Council has also been established, which, among others, monitors offensive and harmful content, raising fears that it may erode freedom and induce greater self-censorship among media professionals.

In Bhutan, proselytisation is banned. Furthermore, religious organisations are required to be apolitical while conducting all operations without commercialisation and distribution of profits to their members, board members among others.<sup>39</sup> There have also been reports of Christians being deprived of state benefits and experiencing harassment, especially in rural areas. In the country, it is also estimated that most Christians are Lhotsampas, who are people of Nepali origin and a minority in Bhutan. Therefore, Christians, in particular, could be bearing a burden of double discrimination.

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[Publications/OHCHRreport2018.pdf](#).

<sup>36</sup> 'CSO Authority', Civil Society Organizations Authority, accessed September 16, 2020, <https://www.csoa.org.bt/public/w>.

<sup>37</sup> 'Freedom in the World', Freedom House, accessed September 16, 2020, [https://freedomhouse.org/sites/default/files/2020-02/FH\\_FIW\\_Report\\_2018\\_Final.pdf](https://freedomhouse.org/sites/default/files/2020-02/FH_FIW_Report_2018_Final.pdf).

<sup>38</sup> Bhutan, *Information, Communication, and Media Act 2007*, National Assembly of Bhutan (2007), <https://www.dit.gov.bt/sites/default/files/attachments/ICM%20Act%202018.pdf>.

<sup>39</sup> Bhutan, *Religious Organizations Act 2007*, National Assembly of Bhutan (2007), [https://www.nab.gov.bt/assets/uploads/docs/acts/2014/Religious\\_organization\\_act\\_of\\_BhutanEng2007.pdf](https://www.nab.gov.bt/assets/uploads/docs/acts/2014/Religious_organization_act_of_BhutanEng2007.pdf).

## India

The past year witnessed multiple events that affected India's minorities and cemented the hold of majoritarian politics in the region. Momentous developments of 2019, such as the revocation of Muslim-majority Kashmir's limited autonomy,<sup>40</sup> the conclusion of the National Register of Citizens (NRC) exercise in Assam,<sup>41</sup> which has put 1.9 million people at risk of statelessness, and the enactment of the Citizenship Amendment Act, all continued to have ramifications in 2020.<sup>42</sup> International and national watchdogs have expressed concern over these actions of the government. The Covid-19 pandemic provided majoritarian actors yet another opportunity to strengthen religious polarisation, even as the country continued to grapple with a rising number of infections and fatalities.

The Citizenship Amendment Act (CAA) triggered widespread protests, which led to several arrests.<sup>43</sup> The Act was passed by the Parliament on December 11, 2019 and came into effect from January 10, 2020.<sup>44</sup> The CAA amended the country's citizenship rules to make it easier for specific religious minorities from India's neighbouring countries to gain citizenship in India. The Act excluded Muslims from this list of minorities, including documented persecuted Muslim groups, such as Ahmadiyas, Rohingyas, and

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40 Syed Ata Hasnain, 'A Year After Abrogation of Article 370 and 35A, the Outcomes Are Barely Understood', *The Wire*, August 5, 2020, <https://thewire.in/security/kashmir-article370-abrogation-success-security>.

41 India Today, 'Assam final NRC list released: 19,06,657 people excluded, 3.11 crore make it to citizenship list', *India Today*, August 31, 2019, <https://www.indiatoday.in/india/story/assam-final-nrc-list-out-over-19-lakh-people-excluded-1593769-2019-08-31>.

42 UN News, 'New citizenship law in India "fundamentally discriminatory": UN human rights office', *UN News*, December 13, 2019, <https://news.un.org/en/story/2019/12/1053511>.

43 Al Jazeera, 'UN human rights experts urge India to release anti-CAA protesters', June 26, 2020, *Al Jazeera*, <https://www.aljazeera.com/news/2020/06/human-rights-experts-urge-india-release-anti-kaa-protesters-200626105916987.html>.

44 The Economic Times, 'Citizenship Amendment Act comes into effect from January 10', *The Economic Times*, January 10, 2020, <https://economictimes.indiatimes.com/news/politics-and-nation/citizenship-amendment-act-comes-into-effect-from-january-10/articleshow/73194780.cms?from=mdr>.

others.<sup>45</sup> Protests erupted throughout the country including in New Delhi, Mumbai, Bangalore, Hyderabad, and Kolkata.<sup>46</sup> In the Uttar Pradesh province, at least 23 persons were killed, more than 83 seriously injured, and hundreds were detained in a state-wide crackdown against protesters.<sup>47</sup> Police forces have used the spread of Covid-19 to erase all traces of the protests, dismantling art installations from prominent sit-in site and arresting organisers.<sup>48</sup> A case is currently pending in the Supreme Court on the state's use of lockdown to silence protestors.<sup>49</sup>

The country's Muslims continued to be the targets of polarisation and identity-based violence. In February 2020, targeted violence in the capital Delhi resulted in at least 53 deaths, majority Muslims.<sup>50</sup> There are allegations of leadership of the governing party's members, individuals in the police force, and propagators of 'Hindutva' instigating violence in those cases.<sup>51</sup> Targeting

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45 'Legislation Factsheet: The Citizenship (Amendment) Act in India', United States Commission for Religious Freedom, February 2020. [https://www.uscifr.gov/sites/default/files/2020%20Legislation%20Factsheet%20-%20India\\_0\\_0.pdf](https://www.uscifr.gov/sites/default/files/2020%20Legislation%20Factsheet%20-%20India_0_0.pdf).

46 Frontline, 'Countrywide CAA & NRC protests: Secular unity', *The Hindu*, January 17, 2020, <https://frontline.thehindu.com/cover-story/article30431601.ece>.

47 'Deaths in anti-CAA protests: UP police 'pressuring' kin not to pursue murder cases' *Counterview*, March 16, 2020, <https://www.counterview.net/2020/03/deaths-in-anti-kaa-protests-up-police.html>.

48 The Print, 'Art installations at Shaheen Bagh, Jamia removed by Delhi Police, graffiti painted white', *The Print*, March 24, 2020, <https://theprint.in/india/art-installations-at-shaheen-bagh-jamia-removed-by-delhi-police-graffiti-painted-white/387086>; Brinda Karat, 'Lockdown Being Misused to Persecute Government's Critics', April 13, 2020, <https://www.ndtv.com/opinion/lockdown-being-misused-to-persecute-governments-critics-2210708>; The Caravan, 'Amid lockdown, Delhi Police target and arrest anti-CAA protesters from Jamia Nagar', April 15, 2020, <https://caravanmagazine.in/politics/anti-kaa-protesters-jamia-arrested>.

49 Scroll, 'As Delhi Police use lockdown to arrest anti-CAA activists, courts must act to check abuse of power', *Scroll*, May 26, 2020, <https://scroll.in/article/962930/as-delhi-police-use-lockdown-to-arrest-anti-kaa-activists-courts-must-act-to-check-abuse-of-power>.

50 Hannah Ellis-Petersen, 'Inside Delhi: beaten, lynched and burnt alive', *The Guardian*, March 1, 2020, <https://www.theguardian.com/world/2020/mar/01/india-delhi-after-hindu-mob-riot-religious-hatred-nationalists>.

51 The Caravan, 'Dead and Buried: Delhi Police ignored complaints against Kapil Mishra, other BJP leaders for leading mobs in Delhi violence', *The Caravan*, June 21, 2020, <https://caravanmagazine.in/politics/delhi-police-ignored-complaints-against-kapil-mishra-bjp-leaders-leading-mobs-delhi-violence>.

of Muslims, in particular, is state sanctioned to the extent that working-class Muslims and youth activists, including women and students, continue to be arrested arbitrarily<sup>52</sup> with fabricated cases and charged under the Unlawful (Activities) Prevention Act (UAPA).<sup>53</sup>

Early efforts to control the pandemic after the national lockdown in March were also beset with polarisation, as a Tablighi Jamaat congregation in Delhi became a Covid-19 ‘hotspot’. This led to intensified targeting of Muslims, with a concerted disinformation campaign seeking to paint the community as guilty of spreading the virus, and several attacks and social boycott campaigns across the country.<sup>54</sup> The government gave a fillip to these efforts by registering criminal cases against 34 Jamaat members, including 28 foreigners. In August, the Bombay High Court struck down these cases, remarking that the Jamaat members were made ‘scapegoats’ and that the propaganda against their religious activity was unwarranted.<sup>55</sup>

Documentation of the Oppressed, a hate crime documentation platform, recorded 71 incidents targeting India’s Muslims since January 2020.<sup>56</sup> These included murders/lynching, physical assault, cow-related violence, attacks on religious infrastructure, and more recently Covid-19 related targeting. Other minorities have also faced increased targeting and harassment. Reports by Christian groups indicate that the community continues to suffer through

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52 Scroll, ‘SC took only 24 days to deliver Bhushan verdict—even as Kashmir, CAA matters await decisions’, *Scroll*, August 20, 2020, <https://scroll.in/article/970929/sc-took-only-24-days-to-deliver-bhushan-verdict-even-as-kashmir-kaa-matters-await-decisions>.

53 Newslick, ‘Misuse of UAPA by Union Government During Covid-19 Pandemic’, *Newslick*, May 1, 2020, <https://www.newslick.in/UAPA-Misuse-Modi-Govt-Crackdown-Activists-Organisations-COVID-19-Lockdown>.

54 Newslick, ‘Corona Jihad and Media’s Communal Polarisation’, *Newslick*, April 8, 2020. <https://www.newslick.in/corona-jihad-and-medias-communal-polarisation>.

55 Hindustan Times, ‘“Scapegoat”: Court’s biting remarks on FIRs against Tablighi Jamaat members’, August 23, 2020, <https://www.hindustantimes.com/india-news/covid-19-bombay-hc-strikes-down-cases-against-28-foreign-tablighi-members/story-Ux4qS1ouqyGS7JZNjOjqij.html>.

56 ‘Database of the Oppressed’, DOTO, accessed September 20, 2020, <https://dotodatabase.com>.

Covid-19 restrictions. According to one report, there were 135 cases of attacks against Christian houses, churches, and individuals during the lockdown till June.<sup>57</sup> Another report stated that hate crimes against Christians in India, including murders, rapes, arson, and attacks on places of worship had risen by 40.87 per cent since 2019, recording 293 such cases.<sup>58</sup> One of the worst recorded cases was of a 14-year-old boy being brutally murdered for his and his family's converting to Christianity.<sup>59</sup> There have been reported incidents of attacks on Christian indigenous families in rural Chhattisgarh as well.<sup>60</sup>

Dalits too continued to be subjects of targeting. More than 200 cases of atrocities against Dalits were documented by civil society groups between April and June 2020. These included murder, lynching, sexual violence, police brutality, and torture. There has also been a spike in violence against Dalit women, with multiple reports of murder, rape, physical molestation, and acid attacks.<sup>61</sup>

In Muslim-majority Kashmir, the systematic repression of dissent following the revocation of limited autonomy in August 2019 has continued to take a heavy toll. During the first six months of 2020, Kashmiri civil society groups recorded 32 extrajudicial killings.<sup>62</sup> Alongside, the blockade on high-speed internet, now in force for almost a year, continued.<sup>63</sup> The dearth of fast and reliable

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<sup>57</sup> Frontline, 'Christians as target during the lockdown', *The Hindu*, August 28, 2020, <https://frontline.thehindu.com/the-nation/christians-as-target/article32284946.ece>.

<sup>58</sup> Ibid.

<sup>59</sup> MapViolence, 'Young Christian boy murdered in Odisha', *MapViolence*, June 4, 2020, <https://mapviolence.in/incidents/young-christian-boy-murdered-in-odisha>.

<sup>60</sup> The Caravan, 'Adivasi Christians face widespread persecution in Chhattisgarh, pressurised into *ghar vapsi*', *The Caravan*, June 29, 2020, <https://caravanmagazine.in/religion/adivasi-christians-face-widespread-persecution-in-chhattisgarh-pressurised-into-ghar-vapsi>.

<sup>61</sup> Rahul Singh, 'Caste based violence and access to Justice.' *Impact of COVID-19 on Dalits in India: Voices from the Ground*, July 06, 2020.

<sup>62</sup> 'Bi-annual HR Review: 229 killings, 107 CASO's, 55 internet shutdowns, 48 properties destroyed', Jammu Kashmir Coalition of Civil Society, June 2020, <https://jkccs.net/bi-annual-hr-review-229-killings-107-casos-55-internet-shutdowns-48-properties-destroyed>.

<sup>63</sup> The Wire, 'J&K Internet Shutdown Based on 'Dubious' Legal Framework: Report', *The Wire*, August 26, 2020, <https://thewire.in/government/jammu-and-kashmir-internet-shutdown-jkccs>.

internet is reported to have greatly hampered the Kashmiri medical community's efforts against Covid-19.<sup>64</sup> Press freedom in Kashmir also came under attack, with the announcement of a new media policy that allows authorities to decide what constitutes 'anti-social' and 'anti-national' content.<sup>65</sup>

These, and other developments, have led to a continuing spate of international censure toward the Indian government. In May, the UN Special Advisor on Prevention of Genocide expressed concern at increased hate speech and discrimination against minorities in India.<sup>66</sup> Also in May, the United States Commission for Religious Freedom (USCIRF) recommended to the US State Department that India be designated as a 'country of particular concern'.<sup>67</sup> In June, the UN Office of the High Commissioner for Human Rights (OHCHR) condemned Indian authorities' crackdown against anti-CAA protestors, stating that it was 'clearly designed to send a chilling message to India's vibrant civil society'.<sup>68</sup> The same month, it also expressed alarm at the country's clampdown on freedom of expression during the pandemic. In July, India was again noted as having stigmatised minorities during the pandemic by the OHCHR.<sup>69</sup> Also in July, four UN Special Rapporteurs made their third communication to the Indian government over its

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<sup>64</sup> Kashmir Observer, 'Is 4G Ban Failing Kashmir's Covid-19 Fight Back?' *Kashmir Observer*, April 16, 2020, <https://kashmirobserver.net/2020/04/16/is-4g-ban-failing-kashmirs-covid-19-fight-back>.

<sup>65</sup> Reporters Without Borders, 'RSF appalled by Orwellian press policy in Indian-held Kashmir', *RSF*, June 19, 2020, <https://rsf.org/en/news/rsf-appalled-orwellian-press-policy-indian-held-kashmir>.

<sup>66</sup> 'Note to Media on India', UN Press Release, May 18, 2020, [https://www.un.org/en/genocideprevention/documents/18052020\\_SA%20note%20to%20media%20on%20India\\_final.pdf](https://www.un.org/en/genocideprevention/documents/18052020_SA%20note%20to%20media%20on%20India_final.pdf).

<sup>67</sup> Akshita Jain, 'Why the US Religious Freedom Report is Bad News for India', *Huffington Post*, May 01, 2020, [https://www.huffingtonpost.in/entry/us-religious-freedom-report-india\\_in\\_5ea965c7c5b6106b8ed03574](https://www.huffingtonpost.in/entry/us-religious-freedom-report-india_in_5ea965c7c5b6106b8ed03574).

<sup>68</sup> Hindustan Times, 'UN experts seek anti-CAA protesters' release', *Hindustan Times*, June 28, 2020, <https://www.hindustantimes.com/india-news/un-experts-seek-anti-kaa-protesters-release/story-zK8yklFw2p5AkvsKhtOGPL.html>.

<sup>69</sup> The Leaflet, 'U.N. High Commissioner for Human Rights says "Discrimination Kills"; lists India for stigmatization of minorities during COVID', *The Leaflet*, February 02, 2020, <https://www.theleaflet.in/u-n-high-commissioner-for-human-rights-says-discrimination-kills-lists-india-for-stigmatization-of-minorities-during-covid/#>.

various human rights violations in Kashmir since August 2019, public.<sup>70</sup>

## Nepal

With the promulgation of its new constitution in 2015, Nepal was declared a secular democratic republic and committed itself to embracing the principles of inclusion and uniform development across the country. However, religious minorities, gender and sexual minorities, Dalits, and refugees continue to face identity-based violence. In its 2020 report to the UN Human Rights Council, Human Rights Watch affirmed that Nepal has failed to live up to its commitments on transitional justice and has also not acted on the recommendations from the last UN review either.<sup>71</sup>

Of the Bhutanese refugees, who had fled ethnic persecution from Bhutan in the 1990s, around 7000 remained in Nepal as of 2019, while the rest have been resettled in eight countries.<sup>72</sup> The United Nations High Commissioner for Refugees (UNHCR) has publicly stated that it will not be supporting the remaining Bhutanese refugees in Nepal from 2020 onwards.<sup>73</sup> While the agency has reached an agreement on the refugees' shelter, food, education, employment, and health services with local agencies and organisations,<sup>74</sup> there is concern among the remaining refugees about their future.<sup>75</sup>

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<sup>70</sup> Kashmir Times, 'UN Experts Concerned over Criminal Cases against Kashmir Journalists', *Kashmir Times*, July 17, 2020, <http://www.kashmirtimes.com/newsdet.aspx?q=103832>.

<sup>71</sup> Human Rights Watch, 'Nepal's Universal Periodic Review: Human Rights Review Should Address Broken Commitments, Impunity', *Human Rights Watch*, July 16, 2020, <https://www.hrw.org/news/2020/07/16/nepals-universal-periodic-review>.

<sup>72</sup> B. Gautam and T.P. Mishra, 'Who stands with Bhutanese refugees in Nepal?' *Nepali Times*, June 19, 2019, <https://www.nepalitimes.com/opinion/who-stands-with-bhutanese-refugees-in-nepal>.

<sup>73</sup> Himalayan News Service, 'UNHCR to stop supporting Bhutanese refugees', *The Himalayan Times*, December 19, 2019, <https://thehimalayantimes.com/nepal/unhcr-to-stop-supporting-bhutanese-refugees>.

<sup>74</sup> Himalayan News Service, 'UNHCR to stop supporting Bhutanese refugees', *The Himalayan Times*, December 19, 2019, <https://thehimalayantimes.com/nepal/unhcr-to-stop-supporting-bhutanese-refugees>.

<sup>75</sup> S. Thapa, Y. D. Gurung and J. Baniya, 'Living in Limbo: Tibetan and

Likewise, there were an estimated 13,000 undocumented Tibetan refugees in Nepal as of 2019.<sup>76</sup> Being undocumented renders them unable to access education, employment, and other government schemes and provisions. While the situation for Tibetan refugees in the country had been precarious during the visit of Chinese President Xi Jinping to Nepal in October last year,<sup>77</sup> news reports in January 2020 revealed that an agreement on the Boundary Management System between the two countries included a provision which compels either government to hand over each other's nationals who have crossed the border illegally.<sup>78</sup> This is likely to have massive implications for Tibetans trying to flee to Nepal en route to India, and is a violation of the principle of non-refoulement.<sup>79</sup> Following this, there have been reports of the US Embassy in Nepal 'pressing' the Foreign Ministry and Home Ministry to issue travel documents to Tibetan refugees.<sup>80</sup>

As of January 2020, there were reportedly around 900 Rohingya refugees in Nepal.<sup>81</sup> In April, officials from the area in Kathmandu where Rohingya who could not work legally were surviving on

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Bhutanese Refugees in Nepal', in: *South Asia State of Minorities Report 2019 Migrants, Refugees and the Stateless*, D. Thapa, S. Thapa and R. Singh (eds) (Kathmandu: Social Science Baha, 2019).

<sup>76</sup> 'General Briefing: Nepal', CSW, May 1, 2020, <https://www.csw.org.uk/2020/05/01/report/4638/article.htm>.

<sup>77</sup> Himalayan News Service, '11 Tibetan refugees among 22 held', *The Himalayan Times*, October 13, 2019, <https://thehimalayantimes.com/kathmandu/11-tibetan-refugees-among-22-held>.

<sup>78</sup> Kosh Raj Koirala, 'Nepal, China to hand over nationals illegally crossing mutual border', *myRepublica*, January 23, 2020, <https://myrepublica.nagariknetwork.com/news/nepal-china-to-hand-over-nationals-illegally-crossing-mutual-border>.

<sup>79</sup> The principle of non-refoulement is enshrined in the Convention Against Torture which was ratified by Nepal in 1991. The principle is also widely accepted as a peremptory norm under customary international law and is binding to all countries regardless of ratification. See: <https://www.hrtmcc.org/download/NEPAL%20-%20Treaty%20Ratification%20Status%20-%20May%202008.pdf>.

<sup>80</sup> M. Dahal, 'Refugee Issue: American Pressure to Provide Travel Document to Tibetans', [Saranarathi samasya: tibbati lai travel document dina ameriki dabab] *Kantipur*, February 2, 2020, <https://ekantipur.com/news/2020/02/02/1580607628970866.html>.

<sup>81</sup> P. Mahat, 'The Rohingya in Nepal', *The Kathmandu Post*, January 1, 2020, <https://kathmandupost.com/columns/2020/01/01/the-rohingya-in-nepal>.

unofficial aid, stopped providing aid to them, claiming that it was not sustainable.<sup>82</sup>

The US Commission on International Religious Freedom (USCIRF) 2020 Annual Report does not designate Nepal as a country of special concern but does mention instances of religious intolerance in the country.<sup>83</sup> The report also warned of the rise of ethno-religious nationalism in Nepal, as a number of Nepali politicians continued their push to redefine Nepal as a Hindu state.<sup>84</sup> The report acknowledged the government's decision to begin the implementation of an anti-conversion law, leading to the arrests of members of religious minority communities, especially Christians, for alleged acts of proselytisation.<sup>85</sup> There have also been several reports of Nepal's religious minorities, specifically Muslims, being targeted during the Covid-19 lockdown.<sup>86</sup>

Despite the criminalisation of caste-based discrimination, many children from the Dalit community are not able to attend school regularly, with many dropping out eventually.<sup>87</sup> Cases of discrimination against Dalits in accessing housing and sites of worship were also documented.<sup>88</sup> In March 2020, a caste

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<sup>82</sup> S. Pandit, 'Municipality Stopped Relief to Rohingya Refugees', [Rohingya saranarathi siwirma nagarpalika le rokyo raahat] *OnlineKhabar*, April 6 2020, <https://www.onlinekhabar.com/2020/04/851724>.

<sup>83</sup> United States Commission on International Religious Freedom, *Annual Report 2020* (Washington D.C.: USCIRF, 2020) [https://www.uscifr.gov/sites/default/files/USCIRF%202020%20Annual%20Report\\_Final\\_42920.pdf](https://www.uscifr.gov/sites/default/files/USCIRF%202020%20Annual%20Report_Final_42920.pdf).

<sup>84</sup> 'Nepal party demands govt to declare country as Hindu state', *The Week*, March 15, 2019, <https://www.theweek.in/news/world/2019/03/15/nepal-party-demands-govt-to-declare-country-as-hindu-state.html>.

<sup>85</sup> Catholic News Agency, 'Arrest of Christians in Nepal prompts religious freedom worry', *Catholic News Agency*, April 27, 2019, <https://www.catholicnewsagency.com/news/arrest-of-christians-in-nepal-prompts-religious-freedom-worry-81923>.

<sup>86</sup> 'Five Christians, Including One American, Arrested in Nepal Under Anti-Conversion Law', *Persecution.Org*, April 24, 2019, <https://www.persecution.org/2019/04/24/five-christians-including-one-american-arrested-nepal-anti-conversion-law>.

<sup>87</sup> National Human Rights Commission Nepal, *Annual Report* (Kathmandu: NHRC Nepal 2019) [https://www.nhrcnepal.org/nhrc\\_new/doc/newsletter/Annual\\_Report\\_2076\\_English\\_min.pdf](https://www.nhrcnepal.org/nhrc_new/doc/newsletter/Annual_Report_2076_English_min.pdf).

<sup>88</sup> 'Dalit student asked to evacuate room in Tarakeshwor Municipality', *Nepal Monitor*, March 6, 2020, <https://nepalmonitor.org/reports/view/28082>; R. Gahatraj, 'Banke Dalits discriminated against on Shivaratri festival.' *The Kathmandu*

discrimination case was filed by a Dalit ward chairperson against a local for using derogatory language.<sup>89</sup> In another instance, a Dalit elected official reported the use of slurs against him by an office assistant.<sup>90</sup>

In May 2020, the members of Nepal National Oppressed Students' Union padlocked the Gurukul Sanskrit School in Bhadrapur, in southeast Nepal, after the school administration denied admission to a Dalit student.<sup>91</sup> Also, in May, in a case that gained national prominence, a 21-year-old Dalit boy and his friends were beaten and thrown into a river by a large gathering of mostly 'upper-caste' villagers, resulting in their deaths.<sup>92</sup> In May, a 13-year-old Dalit girl was allegedly raped and killed by a 25-year-old 'upper-caste' villager in Rupandehi district; the police deemed the action a suicide.<sup>93</sup> The police took the accused into custody only after a national outcry.<sup>94</sup> The UN High Commissioner for Human Rights called for an independent investigation in both these cases.<sup>95</sup>

Gender and sexual minorities too face adversities in the country, resulting in an alarming increase in issues related to their mental health.<sup>96</sup> In July, the National Human Rights Commission released a report, warning that sexual and gender minorities in southern

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*Post*, February 23, 2020, <https://kathmandupost.com/2020/02/23/banke-dalits-discriminated-against-on-shivaratri-festival>.

<sup>89</sup> 'Ward Chair files complaint of caste discrimination', *Nepal Monitor*, March 12, 2020, <https://nepalmonitor.org/reports/view/28167>.

<sup>90</sup> 'Dalit ward chairperson verbally assaulted by office assistant', *Nepal Monitor*, March 6, 2020, <https://nepalmonitor.org/reports/view/28079>.

<sup>91</sup> 'Gurukul Sanskrit School padlocked after school denies admission to Dalit student', *Nepal Monitor*, May 14, 2020, <https://nepalmonitor.org/reports/view/29154>.

<sup>92</sup> A.R. Mulmi, 'Still Untouchable', *The Kathmandu Post*, May 28, 2020, <https://kathmandupost.com/columns/2020/05/28/still-untouchable>.

<sup>93</sup> A. Lal, 'Supposed 'suicides' point towards police incompetence.' *The Record*, June 2, 2020, <https://www.recordnepal.com/perspective/opinions/supposed-suicides-point-towards-police-incompetence>.

<sup>94</sup> Ibid.

<sup>95</sup> 'Nepal: Bachelet condemns Dalit killings, calls for independent investigation', *Office of the United Nations High Commissioner for Human Rights*, May 29, 2020, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25913>.

<sup>96</sup> A. Joshi, 'Think of their mental health', *myRepublica*, February 6, 2020, <https://myrepublica.nagariknetwork.com/news/think-of-their-mental-health/?categoryId=opinion>.

Nepal were most in need of protection, and urged the government to introduce programmes to make them economically self-reliant.<sup>97</sup> The report further recognised that despite constitutional rights, the LGBTIQ+ community in Nepal continue to be discriminated against and stigmatised due to their sexual orientation.<sup>98</sup>

Indigenous communities in the country have also reported discrimination, specifically with cases of forced displacement. Nepal's laws recognise only official title holders of land, making it easy for indigenous communities to be removed from land that they have lived in for generations. As highlighted by both Human Rights Watch and Amnesty International, such forceful removal violates Article 10 of the United Nations Declaration on the Rights of Indigenous Peoples. In July 2020, park rangers and soldiers at the Chitwan National Park were accused of killing a man, and destroying and burning houses in two separate incidents within the month.<sup>99</sup> The man killed was a member of the Chepang indigenous community, and the houses belonged to members of the same community. In June 2020, members of the indigenous Tharu community were forcibly evicted by authorities at Bardiya National Park. Nepal's Human Rights Commission is currently investigating the incident.<sup>100</sup>

## **Pakistan**

The situation of Pakistan's ethnic and religious minorities remains challenging. Though the Ministry of Human Rights and Minorities Affairs is committed to working actively with NGOs against the

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<sup>97</sup> Himalayan News Service, 'Govt urged to protect rights, interests of LGBTI people', *The Himalayan Times*, July 1, 2020, <https://thehimalayantimes.com/kathmandu/government-urged-to-protect-rights-interests-of-lgbti-people>.

<sup>98</sup> Ibid.

<sup>99</sup> Human Rights Watch, 'Nepal Park Guards Accused of Persecuting Indigenous People', *Human Rights Watch*, July 28, 2020, <https://www.hrw.org/news/2020/07/28/nepal-park-guards-accused-persecuting-indigenous-people>.

<sup>100</sup> Amnesty International, 'Nepal: Authorities must stop ruthless evictions of Indigenous peoples', *Amnesty International*, July 21, 2020, <https://www.amnesty.org/en/latest/news/2020/07/nepal-authorities-must-stop-ruthless-evictions-of-indigenous-peoples>.

persecution of religious minorities, implementation of safeguards and rule of law remains very weak. Pakistan has a population of around 200 million, though reliable disaggregated data on population statistics broken down by religion is not available - the results of the latest 2017 census remain disputed and have not been accepted by several religious minority communities.<sup>101</sup> According to the 1998 census, the country had around 2 per cent Christians, 1.85 per cent Hindus, and 0.22 per cent Ahmadiyas.<sup>102</sup>

Ahmadiya places of worships have continued to come under attack. On February 6, a mob stormed into and forcibly occupied a 100-year-old Ahmadiya mosque in Kasur, Punjab. Succumbing to pressure, local authorities handed the mosque over to hardliners.<sup>103</sup> In July 2020, graves belonging to Ahmadiyas were desecrated in the Punjab province.<sup>104</sup> Also in July, the All Party Parliamentary Group for the Ahmadiya community noted the spread of anti-Ahmadiya vitriol to other parts of the world as well in their report.<sup>105</sup>

On May 5, Pakistan's cabinet established the National Commission for Minorities (NCM), but announced that it would not have Ahmadiya representatives, arguing that they did not 'fall in the definition of minorities.'<sup>106</sup> The formation of the NCM had been recommended by multiple actors, including UN treaty bodies and USCIRF, and the creation of a 'national council for minorities' was

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101 'Pakistan Population', *Worldometer*, last accessed September 20, 2020, <https://www.worldometers.info/world-population/pakistan-population>.

102 'Population by Religion', Pakistan Bureau of Statistics, last accessed September 20, 2020, <http://www.pbs.gov.pk/sites/default/files/tables/POPULATION%20BY%20RELIGION.pdf>.

103 Naya Daur, '100-Year-Old Ahmadi Worship Place Handed Over to Vandalising Mob', *Naya Daur*, February 19, 2020, <https://nayadaur.tv/2020/02/100-year-old-ahmadi-worship-place-handed-over-to-vandalising-mob>.

104 Outlook India, 'Graves of minority Ahmadis desecrated in Pak's Punjab: Community member', *Outlook India*, July 16, 2020, <https://www.outlookindia.com/newscroll/graves-of-minority-ahmadis-desecrated-in-paks-punjab-community-member/1896646>.

105 All-Party Parliamentary Group, *Suffocation of the Faithful: The Persecution of Ahmadi Muslims in Pakistan and the Rise of International Extremism* (APPG, 2020) <https://appg-ahmadiyyamuslim.org.uk/wp-content/uploads/2020/07/report.pdf>.

106 Human Rights Watch, 'Pakistan: Ahmadis Kept Off Minorities Commission', *Human Rights Watch*, May 8, 2020, <https://www.hrw.org/news/2020/05/08/pakistan-ahmadis-kept-minorities-commission>.

also part of the Supreme Court of Pakistan's landmark judgement on minority rights in June 2014. However, the formation of the NCM has been widely criticised by human rights groups and civil society as largely tokenistic. The NCM was also not passed by the parliament but was notified as a judicial order during the tenure of the previous government.<sup>107</sup>

In December, during an International Day of Tolerance event, an Administrative Service officer had exhorted Pakistanis to respect equal right of the religious minorities, including Ahmadiyas. Protesters, mainly from Jamat-e-Islami, marched to her office and asked to explain her position on the Ahmadiya community, forcing Hussain to not only apologise for her comments, but also to state that Ahmadiyas were non-Muslims and infidels.<sup>108</sup>

Religious minorities, including Hindus and Christians, have been targeted in identity-based crimes as well. In February, a 22-year-old Christian labourer was tortured and beaten in Kasur, a city just outside Lahore. According to a local newspaper, he was accused of 'polluting' a tube well where he was bathing and brutally beaten by local Muslims. The local police allegedly stood by and did not intervene. He died at a hospital soon after.<sup>109</sup>

On 20 May, 25 houses belonging to members of the Hindu community were levelled and another 10 partly demolished by local authorities in Yazman, Bahawalpur. An independent fact-finding mission by the Human Rights Commission of Pakistan (HRCP) found that the demolition was carried out despite a restraining order.<sup>110</sup>

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107 E. Alam, 'Pakistan reconstitutes the National Commission for Minorities. But will it be effective?' *Geo News*, March 13, 2020, <https://www.geo.tv/latest/287700-pakistan-reconstitutes-the-national-commission-for-minorities-but-will-it-be-effective>.

108 A. Aggarwal, 'Students force woman officer to apologise for calling Ahmedis as people', *India Today*, December 12, 2019, <https://www.indiatoday.in/world/story/pakistan-minority-rights-pas-apology-ahmadi-1627815-2019-12-12>.

109 Gulf News, 'Pakistan: Christian man tortured to death for bathing in tube well and "polluting" it in Kasur', *Gulf News*, March 1, 2020, <https://gulfnews.com/world/asia/pakistan/pakistan-christian-man-tortured-to-death-for-bathing-in-tube-well-and-polluting-it-in-kasur-1.1583052117001>.

110 'Demolition of Hindu homes in Bahawalpur illegal, inhumane', Human Rights Commission of Pakistan, June 5, 2020, <http://hrcp-web.org/hrcpweb/demolition-of-hindu-homes-in-bahawalpur-illegal-inhumane>.

In June, a Christian man was fatally shot multiple times by a local, due to alleged disapproval to a Christian family moving in the neighbourhood.<sup>111</sup> In July, news emerged that a 14-year-old Christian girl, who was forcibly married and converted into Islam in 2019 is now pregnant and remains in the custody of her kidnappers.<sup>112</sup> Pakistan's legal system has failed to grant the girl any relief so far.

Religious minorities are also specific targets of the country's blasphemy laws. On April 30, 2020, a 55-year-old Ahmadiya woman was convicted of blasphemy in Cheleki. The case allegedly stemmed from the woman donating money for an event being held in a non-Ahmadiya mosque in the community. Her donation was rejected, and she was allegedly assaulted by the non-Ahmadiya residents of Cheleki, who then filed a case of blasphemy against her.<sup>113</sup> In December 2019, a US Fulbright scholar and lecturer in a university in Multan was sentenced to death for blasphemy. He had been arrested in 2013 for allegedly posting derogatory comments about Prophet Muhammad on social media.<sup>114</sup>

In June 2020, the trial of a Christian couple, who have been accused of blasphemy and have spent six years imprisoned already, was effectively adjourned indefinitely.<sup>115</sup> In July 2020, Khawaja Asif, Pakistan's former Foreign Minister, was also accused of

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111 The Express Tribune, 'Man, shot by neighbours, dies a month later', *The Express Tribune*, July 2, 2020, <https://tribune.com.pk/story/2252901/man-shot-by-neighbours-dies-a-month-later>.

112 'Family of Abducted Christian Girl in Pakistan Claims Missing Daughter Now Pregnant', *Persecution.org*, July 26, 2020, <https://www.persecution.org/2020/07/26/family-abducted-christian-girl-pakistan-claims-missing-daughter-now-pregnant>.

113 'An act of horrific brutality against a humane and compassionate Ahmadi woman', *Freedom of Conscience*, April 30, 2020, <https://freedomofconscience.eu/an-act-of-horrific-brutality-against-a-humane-and-compassionate-ahmadi-woman>.

114 A. Hashim, 'Pakistani academic Junaid Hafeez sentenced to death for blasphemy', *Al Jazeera*, December 21, 2019, <https://www.aljazeera.com/news/2019/12/pakistani-academic-junaid-hafeez-sentenced-death-blasphemy-191221091139428.html>.

115 'Pakistani Couple to Be Tried After Five Years of Imprisonment', *Persecution.Org*, June 19, 2019, <https://www.persecution.org/2019/06/19/pakistani-couple-tried-five-years-imprisonment>.

blasphemy for speaking in favour of religious equality.<sup>116</sup> In May, in Sialkot, a football maker was accused of blasphemy due to a design on the ball, which members of the Tehreek-e-Labbaik Pakistan (TLP) deemed insulting to Islam.<sup>117</sup> In June, an assistant professor at Shah Abdul Latif University also faced blasphemy charges, for remarking that Islam is a male-dominated religion.<sup>118</sup>

Intersectional identities are at much greater risk, as shown by the rape and murder of a 15-year-old Christian transgender boy in Faisalabad. Urgent appeals were made to the Human Rights Minister, and a suspect was subsequently arrested.<sup>119</sup> In March 2020, a Pakistani official in Karachi reassured the transgender community of government support during the Covid-19 pandemic, bringing the minority community some relief.<sup>120</sup>

In its 2020 Annual Report, the USCIRF renewed their designation of Pakistan as a ‘country of particular concern’ for engaging in ‘systematic, ongoing, and egregious violations of religious freedom.’<sup>121</sup> The Sindh government’s rejection of a bill to criminalise forced conversions, which specifically affects women from minority communities, was seen as a failure to uphold religious freedom.<sup>122</sup>

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116 Naya Daur, ‘PTI Leader Files Blasphemy Complaint Against Khawaja Asif For Saying All Religions Are Equal’, *Naya Daur*, July 13, 2020, <https://nayadaur.tv/2020/07/pti-leader-files-blasphemy-complaint-against-khawaja-asif-for-saying-all-religions-are-equal>.

117 Pakistan Today, ‘Covid-19 fails to halt blasphemy allegations in Pakistan’, *Pakistan Today*, May 5, 2020, <https://www.pakistantoday.com.pk/2020/05/05/covid-19-fails-halt-blasphemy-allegations-pakistan>.

118 Humanists International, ‘Pakistani authorities should release professor detained on blasphemy charges’, *Humanists International*, June 12, 2020, <https://humanists.international/2020/06/pakistani-authorities-should-release-professor-detained-on-blasphemy-charges>.

119 Union of Catholic Asian News, ‘Christian transgender raped, murdered in Pakistan’, *UCA News*, April 8, 2020, <https://www.ucanews.com/news/christian-transgender-raped-murdered-in-pakistan/87659>.

120 Human Rights Watch, ‘Pakistan Official Supports Transgender Community Amid COVID-19’, *Human Rights Watch*, March 25, 2020, <https://www.hrw.org/news/2020/03/25/pakistan-official-supports-transgender-community-amid-covid-19>.

121 US Commission on International Religious Freedom, *Annual Report 2020* (Washington DC: USCIRF, 2020) 32-33, [https://www.uscifr.gov/sites/default/files/USCIRF%202020%20Annual%20Report\\_Final\\_42920.pdf](https://www.uscifr.gov/sites/default/files/USCIRF%202020%20Annual%20Report_Final_42920.pdf).

122 Global Legal Monitor, ‘Pakistan: Sindh Province Rejects Bill Against Forced Conversions’, *US Library of Congress*, November 15, 2019, <https://www.loc.gov/>

Some positive developments, however, include the foundation of the country's first Sikh university, reopening of a temple in Sialkot, as well as some acquittals in blasphemy cases.<sup>123</sup>

## Sri Lanka

The island nation continues to grapple with ethnic and religious strife, one of the most visible cases of which was the Easter bombings in April 2019 with 8 blasts in and around Colombo targeting churchgoing Christians.<sup>124</sup> On February 26, 2020, Sri Lanka formally notified the UN Human Rights Council that it was withdrawing from the UN resolution on post-war accountability and reconciliation, known as Resolution 40/1,<sup>125</sup> deeming the commitments made in the resolution 'impractical, unconstitutional and undeliverable'. Human rights activists say that this decision indicates a lack of commitment towards addressing violations of human rights, especially those suffered by the Tamil community, that took place during the war.

The immediate aftermath of the Easter bombings was attacks against the Muslim community in the country,<sup>126</sup> with Muslim voters being targeted during the November 2019 Presidential elections.<sup>127</sup> In

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[law/foreign-news/article/pakistan-sindh-province-rejects-bill-against-forced-conversions.](http://www.aljazeera.com/news/2019/10/pakistan-launch-university-honour-sikh-guru-191028090004587.html)

<sup>123</sup> Al Jazeera, 'Pakistan to launch university in honour of first Sikh Guru', *Al Jazeera*, October 28, 2019, <https://www.aljazeera.com/news/2019/10/pakistan-launch-university-honour-sikh-guru-191028090004587.html>; The Nation, 'Historic Shawala Teja Singh Temple opens for worship after 72 years', *The Nation*, October 26, 2019, <https://nation.com.pk/26-Oct-2019/historic-shawala-teja-singh-temple-opens-for-worship-after-72-years>; The Dawn, 'Man acquitted in blasphemy case after 18 years in prison', *The Dawn*, September 26, 2019, <https://www.dawn.com/news/1507410>.

<sup>124</sup> The Hindu, 'Sri Lanka Easter bombings', *The Hindu*, April 22, 2019, <https://www.thehindu.com/topic/sri-lanka-easter-bombings>.

<sup>125</sup> M. Srinivasan, 'Sri Lanka notifies UN about rights resolution withdrawal', *The Hindu*, February 26, 2020, <https://www.thehindu.com/news/international/sri-lanka-notifies-un-about-rights-resolution-withdrawal/article30924951.ece>.

<sup>126</sup> J. Gettleman and D. Bastians, 'Sri Lanka's Muslims Face an Angry Backlash After Easter Sunday Attacks', *The New York Times*, April 24, 2019, <https://www.nytimes.com/2019/04/24/world/asia/sri-lankas-muslims.html?auth=login-google>.

<sup>127</sup> Hannah Ellis-Petersen, 'Sri Lanka presidential election: buses carrying

April 2020, a prominent Sri Lankan lawyer was arrested for an alleged connection to the bombings under the Prevention of Terrorism Act (PTA), and was denied access to his lawyers nor produced in the court of law for more than three months.<sup>128</sup> A retired government official with a history of critiquing religious fundamentalism and racism in Sri Lanka<sup>129</sup> was also arrested in April over a post calling for a ‘jihad (struggle) of thought’ against all forms of fundamentalisms and racism persecuting Muslims in the country.<sup>130</sup>

In May, a young, autistic Muslim boy was assaulted and abused by policemen using Islamophobic slurs. CCTV recording of the entire incident is available, yet three police officers involved have only been indicted.<sup>131</sup> A Human Rights Watch report has also accused the Sri Lankan government of using Covid-19 to stoke communal tensions.<sup>132</sup> Authorities reportedly did not counter calls to boycott Muslim businesses on social media, as well as false allegations of the community spreading Covid-19 deliberately. In March 2020, the government also required remains of all Covid-19 victims to be cremated, going against the burial traditions of some religious minorities.<sup>133</sup>

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Muslim voters attacked’, *The Guardian*, November 16, 2019, <https://www.theguardian.com/world/2019/nov/16/sri-lanka-presidential-election-gunmen-fire-on-buses-carrying-muslim-voters>.

128 Daily FT, ‘ICJ raises concerns on arbitrary arrest, detention of lawyer Hejaaz Hizbullah.’ *Daily FT*, April 22, 2020, <http://www.ft.lk/news/ICJ-raises-concerns-on-arbitrary-arrest-detention-of-lawyer-Hejaaz-Hizbullah/56-699090>.

129 Daily FT, ‘Ramzy Razeek: An extraordinary struggle for an ordinary life of service upended by a Police arrest’, *Daily FT*, May 9, 2020, <http://www.ft.lk/opinion/Ramzy-Razeek-An-extraordinary-struggle-for-an-ordinary-life-of-service-upended-by-a-Police-arrest/14-699917>.

130 ‘Sri Lanka: The Truth About the Arrest and Detention of Ramzy Razeek’, *Sri Lanka Brief*, April 14, 2020, <https://srilankabrief.org/2020/04/sri-lanka-the-truth-about-the-arrest-and-detention-of-ramzy-razeek>.

131 Colombo Times, ‘Full-scale inquiry by IGP: Three cops interdicted over the assault on the autistic boy in Aluthgama’, *Colombo Times*, June 6, 2020, <http://colombotimes.net/full-scale-inquiry-by-igp-three-cops-interdicted-over-the-assault-on-the-autistic-boy-in-aluthgama>.

132 Human Rights Watch, ‘Sri Lankan Officials Stoke Covid-19 Communal Hate’, *Human Rights Watch*, March 19, 2020, <https://www.hrw.org/news/2020/05/19/sri-lankan-officials-stoke-covid-19-communal-hate>.

133 A Jazeera, ‘Anguish as Sri Lanka forces Muslims to cremate COVID-19 victims’, April 3, 2020, <https://www.aljazeera.com/news/2020/04/03/anguish-as-sri-lanka-forces-muslims-to-cremate-covid-19-victims>.

The United Nations Rapporteur on Freedom of Religion or Belief, in their report in March 2020, addressed the tense situation in Sri Lanka following the Easter Sunday attacks, and the lingering impact of the lack of accountability and resolution of issues arising from the civil war.<sup>134</sup> The report also acknowledged the increasing polarisation in the country along ethno-religious lines. The election of Gotabaya Rajapaksa, brother of two-term President Mahinda Rajapaksa, has seen the government move towards a majoritarian stand, with the President pledging in front of the Parliament to protect and nurture Buddha sasana as part of his government's policy.<sup>135</sup>

Women activists who have been working to reform the Muslim Marriage and Divorce Act for decades expressed concerns at a Bill put forth to repeal it,<sup>136</sup> as the Bill does not represent the interests of Muslim women and children.<sup>137</sup> Rather, the bill serves the 'One Country, One Law' discourse, a divisive notion that selectively attacks minority identities and practices, asking for them to be brought under a blanket Sri Lankan identity, culture, or law. The proposed Bill reflects a growing intolerance of religious and cultural diversity in Sri Lanka and signals a majoritarian intent to assimilate minorities.

The effects of the country's civil war continue to shape national discourse. It was reported on 21 January 2020 that President Gotabaya Rajapaksa decided to issue death certificates to the thousands of people still declared missing or forcefully disappeared during the country's civil war.<sup>138</sup> Human rights

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134 Colombo Gazette, 'UN Rapporteur on freedom of religion raises concerns on Sri Lanka', *Colombo Gazette*, March 2, 2020, <https://colombogazette.com/2020/03/02/un-rapporteur-on-freedom-of-religion-raises-concerns-on-sri-lanka>.

135 'The policy statement made by His Excellency Gotabaya Rajapaksa, President of the Democratic Socialist Republic of Sri Lanka at the inauguration of the Fourth Session of the 8th Parliament of Sri Lanka', Parliament of Sri Lanka, June 1, 2020, <https://www.parliament.lk/en/news-en/view/1820?category=6>.

136 'Statement: Do Not Exploit the Struggle for MMDA reform', *Muslim Personal Law Reform Action Group*, January 14, 2020, <https://mplreforms.com/2020/01/14/statement-do-not-exploit-the-struggle-for-mmda-reform>.

137 Daily Mirror Online, 'Rathana Thera submits bill to repeal MMDA', *Daily Mirror Online*, January 8, 2020, [http://www.dailymirror.lk/top\\_story/Rathana-Thera-submits-bill-to-repeal-MMDA/155-180919](http://www.dailymirror.lk/top_story/Rathana-Thera-submits-bill-to-repeal-MMDA/155-180919).

138 Al Jazeera, 'President Rajapaksa says Sri Lanka to treat war missing as

activists highlighted that truth was an important element of the families' demands, as they seek information on what happened to their loved ones after their abductions, or after they were handed over to the forces.<sup>139</sup> They urged the government to provide the families with the truth as well, and not simply a death certificate and monetary compensation.

During the annual Independence Day celebrations on February 4, 2020, the national anthem was only sung in Sinhala.<sup>140</sup> This was done despite the fact that Tamil is one of the official languages of Sri Lanka, and the national anthem has historically been sung in both languages. This action was critiqued by many as exclusionary towards the Tamil communities. The singing of the anthem in Tamil is merely symbolic, given the absence of state commitment to ensure true equality and protections for these communities, and its removal was indicative of the lack of even such a small commitment.

In June 2020, the President appointed a Task Force for Archaeological Heritage Management in the Eastern Province. The Eastern Province is presently inhabited by equal proportions of Sinhala, Tamil, and Muslim citizens. Historically, a majority of the population was Tamil, but the demography has been altered significantly through government-organised colonisation. However, the Task Force has no Muslim or Tamil members and consists almost entirely of Sinhala military personnel and Buddhist monks. This composition, in addition to existing tensions around land in the Province, have raised concerns that the Task Force will overlook the concerns of Tamils and Muslims in its activities.<sup>141</sup>

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dead', *Al Jazeera*, January 21, 2020, <https://www.aljazeera.com/news/2020/01/president-rajapaksa-sri-lanka-treat-war-missing-dead-200121134624785.html>.

139 Colombo Telegraph, 'Women's Action Network Condemns President Gota's Statements on Missing Persons', *Colombo Telegraph*, January 26, 2020, <https://www.colombotelegraph.com/index.php/womens-action-network-condemns-president-gotas-statements-on-missing-persons>.

140 TRT World, 'Sri Lanka scraps Tamil national anthem at Independence Day', *TRT World*, February 4, 2020, <https://www.trtworld.com/asia/sri-lanka-scraps-tamil-national-anthem-at-independence-day-33479>.

141 PARL, 'Presidential Task Force for Archaeological Heritage Management in the eastern Province: Brief Note & Commentary', *People's Alliance for Right to Land*, June 22, 2020, <https://lstlanka.org/wp-content/uploads/2020/07/Eng-Brief-Note-and-Commentary-Presidential-Task-Force-on-Archeology-Final-24-June-2020.pdf>.

In July 2020, security forces attempted to restrict a memorial mass for Tamil civilians who had lost their lives 25 years ago in the Sri Lanka Air Force bombing of the area and church in Navaly. The local police had requested to issue an injunction, labelling the event as a 'protest', which was denied by the Mallakam Court. During the memorial, many police, Special Task Force members, and intelligence personnel in civilian clothing were present around the area, and surveillance had begun a few days prior. The police attempted to restrict mourners, maintained a close watch throughout, and the intelligence personnel photographed those lighting lamps and gathering.<sup>142</sup>

On June 30, 2020, the Core Group on Sri Lanka at the UN Human Rights Council 44 reiterated their disappointment at Sri Lanka's withdrawal from UNHRC Resolution 30/1, while remaining committed to 'advancing the resolution's goals of accountability, reconciliation, and inclusive peace in Sri Lanka.' The Group also highlighted the continued targeting of minorities through 'the pardoning of Sergeant Sunil Ratnayake and promotion of others accused of serious violations during the conflict, and the militarisation of a wide range of civilian functions.'<sup>143</sup>

In August 2020, the government released a statement of policy at the opening of the newly elected Parliament. The Tamils' demand for a federal constitution was negated with the government claiming that it had a massive mandate to retain the unitary constitution. The President reiterated the emphasis on 'one country, one law for all the people', and pledged to protect Buddha sasana. An advisory council comprising of only Buddhist monks has also been set up to give advice on governance.<sup>144</sup>

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142 INFORM Human Rights Documentation Centre, *Repression of Dissent in Sri Lanka in July 2020* (Colombo: INFORM Human Rights Documentation Centre, 2020), [https://www.inform.lk/wp-content/uploads/2020/09/ROD\\_July2020.pdf](https://www.inform.lk/wp-content/uploads/2020/09/ROD_July2020.pdf).

143 Rita French, 'UN Human Rights Council 44: statement on behalf of the Core Group on Sri Lanka', *GOV.UK*, June 30, 2020, <https://www.gov.uk/government/speeches/un-human-rights-council-44-statement-on-behalf-of-the-core-group-on-sri-lanka>.

144 P. K. Balachandran, 'Lankan Minorities Get Short Shrift in Rajapaksa's Statement of Policy', *The Citizen*, August 23, 2020, <https://www.thecitizen.in/index.php/en/NewsDetail/index/6/19247/Lankan-Minorities-Get-Short-Shrift-in-Rajapaksas-Statement-of-Policy>.

## **Appendices**



## **Appendix I: Commentaries**



## Commentary

South Asia remains a challenging geopolitical part of the world with 25 per cent of world population and 4 per cent of the world's economy. It has witnessed decades of insecurity, conflict and continued poverty. The countries in the region have struggled to catch up with the steady progress of other regions in Asia and have been partially successful in developing their economies and societies. However, despite everyone's hope that a functioning regional cooperation for economic development could help the region for greater economic integrity and prosperity, the political dispute and social and structural challenges unhinged the prospect of a better region for its populations, in particular the vulnerable minorities. Key elements to stability in the region therefore would not be found in greater regional cooperation and economic relations but rather should be sought and traced back to the cohesiveness of internal democratic political, social, economic and cultural structure where it allows for vibrant civil society, and respect for minorities and their rights and freedoms.

In a region that encompasses 25 per cent of world population and only contribute to 4 per cent of the world economy, it is very much telling us why we have not been successful as other regions are in the other part of the world. The problem and issues related to our region is rooted to our lack of understanding of the importance of adhering to the principle of human rights and freedoms, regional cooperation, respect and protection for minority rights and expanding and freeing spaces for civil societies.

While in the face of growing population, decaying infrastructure, degrading environments our governments in the region do little and lack the resources and capacities to address challenges arising from these issues, they always find ways to securitise the civic space and blame others, often vulnerable minorities, and minority rights activists and civil society organisations for

pointing to these structural problems and consequential failure in our region.

In the past decade, a prominent team of human rights activists, scholars, women rights leaders, and I have tried to advocate for a regional human rights mechanism. Unfortunately, such a mechanism will remain a dream to be materialised in the future. However, we are benefiting from the strong network and coalitions of civil society in the region who place much of their focus and efforts on our problems, human rights issues and challenges both at the national level and across our unstable region.

The current report that sheds light on the situation of civic space for minorities in South Asia is an interesting and credible example of how our civil society and human rights networks in the region have been trying to fill the gap that exists in the absence of a regional intergovernmental system of cooperation and a regional human rights mechanism. I am thrilled to see the findings of the team in the region which points to the importance of a free space for civil society and respect, promotion and protection of minority rights. Though I must express my appalled sense of worries and concern over the findings of the report, I hope these findings which are well researched, fact based and informative are used by the states in the region to correct the poor course of their actions towards minority rights and civic space. I also hope that this report provides a tool and venue for discussion between the international organisations, civil societies, human rights and civil and democracy and minority rights activists to educate and raise awareness among publics and inform policies and programs in the region.

I strongly believe that our region will benefit from greater freedom provided to our civil society and better protection, respect and support for minority rights. This report clearly indicates that our countries' approach has been closing civic space for minorities and weakening or damaging the state capacity to fulfil its obligation under the international human rights law and international obligations.

I advocate and join my voice strongly with our human rights activists, civil society leaders, NGO and minority rights advocates for a better region for minority and their rights and freedom. This

*Commentary*

report places a good list of recommendations that should be taken into consideration and a clear description of the current state of affair that must be improved. It is my genuine wish to see a change in the situation in our region so the people living in our region will live in liberty, dignity, prosperity and free from want and free from fear.

**Dr Sima Samar**  
Chairperson  
Afghan Independent Human Rights Commission

## Commentary

The South Asia Collective's *South Asia State of Minorities Report 2020: Minorities and Shrinking Civic Space* in the countries of the region invites the attention of human and civil rights activists of the region, international watchdogs and UN bodies to the increasing authoritarian, discriminatory and repressive tendencies in almost all the countries of the region, with a notable exception of Bhutan. From the world's largest democracy, India, to relatively more democratic Nepal, ethnically divided Sri Lanka, to censoring Pakistan and war-ridden Afghanistan to 'secularising' Bangladesh, most countries of the region compete in terms of discrimination against religious and ethnic minorities, majoritarian rule bordering fascism and decimating civil and human rights, suppression of freedom of expression in particular. Be it Tamils in Sri Lanka, Muslims and Kashmiris in India, Baloch and religious minorities in Pakistan, Hindus and Urdu-speakers in Bangladesh, the minorities continue to be repressed and expropriated.

With the rise of ethnic-religious nationalism and authoritarianism across South Asia, except in Nepal and Bhutan, the deteriorating state of human and civil rights is crossing all alarming proportions. Still worse, unscrupulous state and non-state actors are enjoying a rabid culture of immunity putting life and security of human rights activists in perpetual jeopardy. The intra and inter-state conflicts reinforce a jingoistic environment as media tied to national markets become a tool in fanning chauvinism, nationalism and cross-border tensions. In an adverse environment, freedom of expression and media is the principal casualty with Pakistan leading the censorship regime in the region.

While providing historical background, the 2020 Report rightly points out the major deficits of rights and freedoms in the countries of the region. It offers remedies and recommendations to save

*Appendix*

the situation from getting bad to worse. On behalf of myself and South Asian Free Media Association (SAFMA), I laud the efforts of authors of this illuminating report for their valuable contribution to the cause of human and civil rights in South Asia.

**Imtiaz Alam**  
Secretary General  
South Asian Free Media Association



**Appendix II: Assessment of Civic Space  
in South Asia (online survey)**



### Survey Guidelines

In a democratic society, civil society provides additional checks on the legislative and executive branches of government. As such, it is also expected that any government will have an incentive to establish its own checks and balances over civil society. Such a relationship comprises both confrontation and cooperation, and is also characterised by the ambivalence of governments towards civil society that may range from distrust to full partnership in activities such as civic engagement or development endeavours.

The closing of civic space, however, can result in the weakening of measures that protect civil and political rights, and can create an unfavourable situation for sustainable economic, social and human development. Hence, it is the duty of a conscious society to constantly be on the watch for any shrinking of the space for civil society to operate, and seek or suggest ways to reverse any such trend.

This survey is an attempt to gain a better understanding of the state of civic space in South Asia in general as well in the different countries of the region. It is being undertaken by the South Asia Collective, an informal network of organisations representing the different countries of the region working to highlight the condition of minorities in the region and protect and promote their rights (<http://thesouthasiacollective.org/>) through publications such as the annual 'South Asia State of Minorities Report', accessible at <http://thesouthasiacollective.org/annual-reports/>. This survey will form part of the 2020 report which is focusing on the theme of civil space and minority rights.

Apart from a short preliminary part on personal details, the survey consists of **39 questions** divided into five sections dealing with civil liberty, civil society, freedom of expression, freedom of peaceful assembly, and legitimacy of the present government, specifically the central government. These questions have been adapted from the V-Dem Annual Democracy Report 2019, Freedom in the World 2020, and CIVICUS Monitor. All the questions have been

formulated on a Likert Scale, ranging from strongly disagree to strongly agree. Completing the survey will likely take you around **half an hour**.

We emphasise that your response to the survey questions shall remain **confidential**. The data will be available to a select number of analysts, but will be anonymised beforehand in order to protect your identity. Your participation is entirely **voluntary**.

Survey Questions						
SN	Question	Response				
<b>A</b>	<b>Civil Liberty</b>					
	<b>Since the current government assumed power,</b>					
1	All social groups, as distinguished by language, caste, ethnicity, religion, race, or region, enjoy the same level of civil liberties.	Strongly Disagree	Disagree	Neither Agree or Disagree	Agree	Strongly Agree
2	The poor and the rich both enjoy the same level of civil liberties.	Strongly Disagree	Disagree	Neither Agree or Disagree	Agree	Strongly Agree
3	Men and women enjoy the same level of civil liberties.	Strongly Disagree	Disagree	Neither Agree or Disagree	Agree	Strongly Agree
4	All gender and sexual minorities enjoy the same level of civil liberties as the rest.	Strongly Disagree	Disagree	Neither Agree or Disagree	Agree	Strongly Agree
<b>B</b>	<b>Civil Society</b>					
	<i>In the context of this study, the following set of questions specifically refer to civil society organisations, social movements, groups and individuals that fulfil advocacy and oversight functions.</i>					
	<b>Since the current government assumed power,</b>					
5	All groups have been allowed to form and register associations in order to advance collective interests.	Strongly Disagree	Disagree	Neither Agree or Disagree	Agree	Strongly Agree
6	No new laws have been introduced, passed, or amendments made to existing ones, to make it more difficult for people to form and operate civil society organisations.	Strongly Disagree	Disagree	Neither Agree or Disagree	Agree	Strongly Agree

7	The government has not used its authority to deregister, create issues with registration, or otherwise interfered in the functioning of civil society organisations (CSOs).	Strongly Disagree	Disagree	Neither Agree or Disagree	Agree	Strongly Agree
8	The government has allowed religious organisations/groups to function without any hindrance.	Strongly Disagree	Disagree	Neither Agree or Disagree	Agree	Strongly Agree
9	The state has taken no action to repress, control or unduly influence CSOs and/or human rights defenders.	Strongly Disagree	Disagree	Neither Agree or Disagree	Agree	Strongly Agree
10	CSOs have been allowed to receive foreign funding without restriction.	Strongly Disagree	Disagree	Neither Agree or Disagree	Agree	Strongly Agree
11	There has been no discernible increase in the number of attacks (including physical attacks, raids on offices, legal harassment) on civil society organisations, human rights defenders and activists.	Strongly Disagree	Disagree	Neither Agree or Disagree	Agree	Strongly Agree
12	There have been no instances of some CSOs and human rights defenders (for example, those promoting human rights/democracy/good governance) being particularly targeted.	Strongly Disagree	Disagree	Neither Agree or Disagree	Agree	Strongly Agree
13	No civil society groups have been specifically targeted because of their activism in support of women, gender and sexual minorities, religious minorities, ethnic minorities, and/or marginalised groups.	Strongly Disagree	Disagree	Neither Agree or Disagree	Agree	Strongly Agree
14	Advocacy or activism by GOs/NGOs has supplemented the space for rights advocacy for women, gender and sexual minorities, religious minorities, ethnic minorities, and/or marginalised groups.	Strongly Disagree	Disagree	Neither Agree or Disagree	Agree	Strongly Agree
15	Public statements from the government directed at civil society and human rights defenders have shifted from negative to positive.	Strongly Disagree	Disagree	Neither Agree or Disagree	Agree	Strongly Agree

16	There have been progressive court judgements related to the Freedom of Association.	Strongly Disagree	Disagree	Neither Agree or Disagree	Agree	Strongly Agree
<b>C</b>	<b>Freedom of Expression</b>					
	<b>Since the current government assumed power,</b>					
17	The state has granted media houses, CSOs, academics, human rights defenders or activists full freedom of expression.	Strongly Disagree	Disagree	Neither Agree or Disagree	Agree	Strongly Agree
18	The major print and broadcast media represent a wide range of political perspectives.	Strongly Disagree	Disagree	Neither Agree or Disagree	Agree	Strongly Agree
19	There is no evidence of English media bias against opposition parties or candidates.	Strongly Disagree	Disagree	Neither Agree or Disagree	Agree	Strongly Agree
20	There is no evidence of vernacular media bias against opposition parties or candidates.	Strongly Disagree	Disagree	Neither Agree or Disagree	Agree	Strongly Agree
21	There have been no instances of journalists being harassed (i.e., threatened with libel, arrested, imprisoned, beaten, or killed) by governmental or powerful nongovernmental actors while engaged in legitimate journalistic activities.	Strongly Disagree	Disagree	Neither Agree or Disagree	Agree	Strongly Agree
22	There is no evidence of self-censorship among journalists or civil society when reporting on issues the government considers politically sensitive.	Strongly Disagree	Disagree	Neither Agree or Disagree	Agree	Strongly Agree
23	Public statements from the government directed at journalists and the media have shifted from negative to positive.	Strongly Disagree	Disagree	Neither Agree or Disagree	Agree	Strongly Agree
24	The state has made no attempt to restrict freedom of expression on the internet and social media.	Strongly Disagree	Disagree	Neither Agree or Disagree	Agree	Strongly Agree

25	Individuals are free to express their personal views on political or other sensitive topics without fear of surveillance or retribution.	Strongly Disagree	Disagree	Neither Agree or Disagree	Agree	Strongly Agree
26	Excluded or disadvantaged groups have been allowed to express themselves freely.	Strongly Disagree	Disagree	Neither Agree or Disagree	Agree	Strongly Agree
27	People have been able to access government information in practice.	Strongly Disagree	Disagree	Neither Agree or Disagree	Agree	Strongly Agree
28	There is freedom of religion in practice.	Strongly Disagree	Disagree	Neither Agree or Disagree	Agree	Strongly Agree
29	No laws have been introduced or changed (such as those dealing with freedom of information, media regulation/self-regulation, contempt of court, censorship, sedition, etc) by the state to hinder free expression.	Strongly Disagree	Disagree	Neither Agree or Disagree	Agree	Strongly Agree
30	There have been progressive court judgements related to the Freedom of Expression.	Strongly Disagree	Disagree	Neither Agree or Disagree	Agree	Strongly Agree
<b>D</b>	<b>Freedom of peaceful assembly</b>					
	<b>Since the current government assumed power,</b>					
31	There is freedom of assembly in the country in law.	Strongly Disagree	Disagree	Neither Agree or Disagree	Agree	Strongly Agree
32	The state has allowed peaceful protests and demonstrations.	Strongly Disagree	Disagree	Neither Agree or Disagree	Agree	Strongly Agree
33	State security forces have not used physical violence against protestors.	Strongly Disagree	Disagree	Neither Agree or Disagree	Agree	Strongly Agree
34	State security forces have not made arbitrary or illegal arrests in violation of the right to peaceful assembly.	Strongly Disagree	Disagree	Neither Agree or Disagree	Agree	Strongly Agree

35	There have been progressive court judgements related to the Freedom of Peaceful Assembly.	Strongly Disagree	Disagree	Neither Agree or Disagree	Agree	Strongly Agree
<b>E</b>	<b>Legitimacy</b>					
	<b>Since the current government assumed power,</b>					
36	The government has promoted a specific ideology or societal model (an officially codified set of beliefs used to justify a particular set of social, political, and economic relations; for example, socialism, nationalism, religious traditionalism, etc) in order to justify the regime in place.	Strongly Disagree	Disagree	Neither Agree or Disagree	Agree	Strongly Agree
37	The Chief Executive of the country has been portrayed as being endowed with extraordinary personal characteristics and/or leadership skills (e.g., as father or mother of the nation, staunch nationalist, exceptionally heroic, moral, pious, or wise, or any other extraordinary attribute valued by the society).	Strongly Disagree	Disagree	Neither Agree or Disagree	Agree	Strongly Agree
38	The government refers to their performance (such as providing economic growth, poverty reduction, effective and non-corrupt governance, and/or providing security) in order to justify the regime in place.	Strongly Disagree	Disagree	Neither Agree or Disagree	Agree	Strongly Agree
39	The government refers to legal norms and regulations (as laid out, for instance, in the constitution regarding access to power, e.g. elections, as well as exercise of power, e.g. rule of law) in order to justify the regime in place.	Strongly Disagree	Disagree	Neither Agree or Disagree	Agree	Strongly Agree



A major tenet of democracy is protecting civil society while also encouraging its vibrancy. It is the responsibility of states to ensure that citizens can freely exercise their fundamental rights of speech, assembly and association without fear, and guarantee access to legal remedy if and when these rights are violated. The world at large is, however, experiencing a constriction of civic space and nowhere is this more apparent than in South Asia.

*South Asia State of Minorities Report 2020: Minorities and Shrinking Civic Space* highlights how civil society across the region has been navigating the terrain of state practices, especially with regard to advocacy of minority rights. While the regression of civic space affects society at large, the dynamics and impacts of restrictions tend to be particularly severe, and take place with greater frequency, for minorities and those who raise a voice for their rights. This volume presents chapters from Afghanistan, Bangladesh, Bhutan, India, Nepal, Pakistan and Sri Lanka, reporting on the state of civic space within their respective territories.

This volume is planned as a tool for advocacy. It is hoped that these annual reports on outcomes for minorities and the quality of state provisioning will spur public debate in the region and create the conditions for state parties, and regional and international mechanisms to give serious consideration to issues of minorities. The purpose of the initiative is to promote equal citizenship and equal rights for all citizens, a central challenge of the 'deepening democracy' agenda in the region, and to highlight the alarmingly narrow civic space for minorities, including human rights defenders, journalists and activists.

This publication is the fourth in the series, following *South Asia State of Minorities Report 2018: Exploring the Roots*; *South Asia State of Minorities Report 2016: Mapping the Terrain*; and *South Asia State of Minorities Report 2019: Refugees, Migrants and the Stateless*. The report is put together by the South Asia Collective, consisting of organisations and human rights activists that dream of a just, caring and peaceful South Asia by documenting the condition of the region's minorities—religious, linguistic, ethnic, caste, and gender, among others—hoping it will contribute to better outcomes for South Asia's many marginalised groups.

The  
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