

FORUM-ASIA

REPRESSIVE MEASURES DURING COVID-19 PANDEMIC IN SOUTH ASIA

IMPLICATIONS ON CIVIC SPACE
AND FUNDAMENTAL FREEDOMS



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The Asian Forum for Human Rights and Development (FORUM-ASIA) is a Bangkok-based regional network of 85 member organisations across 23 Asian countries, with consultative status with the United Nations Economic and Social Council, and consultative relationship with the ASEAN Intergovernmental Commission on Human Rights. Founded in 1991, FORUM-ASIA works to strengthen movements for human rights and sustainable development through research, advocacy, capacity development and solidarity actions in Asia and beyond. Its regional secretariat is in Bangkok, and it has sub-regional offices in Geneva, Jakarta, and Kathmandu. www.forum-asia.org

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FOREWORD

The COVID-19 pandemic has brought about various socio-economic and political catastrophic changes around the world. Such changes were greatly felt in Asia, particularly in the region's human rights landscape.

The pandemic has unleashed an unprecedented wave of disruption, upending individual lives and challenging governments worldwide to navigate the daunting challenge of safeguarding public health while also mitigating the deadly and devastating impact of the virus. South Asia is one among the regions where the upheaval is more pronounced – a region characterised by cultural, religious, and linguistic diversity but burdened by a complex postcolonial history that has resulted in political instability, armed conflicts, divisions along ethnoreligious lines, and a blatant disregard for human rights.

Within this turbulent context, the response to the COVID-19 crisis in South Asia took on a distinct trajectory, marked by the exploitation of the pandemic to consolidate power, curtail fundamental

freedoms, intensify attacks on democracy, weaken civic space, and exacerbate divisions along religious and ethnic lines.

Instead of addressing this public health emergency head-on, governments in the region saw an opportunity to further stifle dissent and dismantle the crucial work of human rights defenders.

This report highlights the distressing reality faced by South Asia, wherein the pandemic has been exploited as a justification for increased authoritarianism. Under the pretext of public health, governments have introduced repressive laws and surveillance systems that encroach upon people's freedoms of association, peaceful assembly, and expression, among other fundamental rights.

Meticulously examining the distinctive circumstances of seven South Asian countries, this report sheds light on the prevalent culture of impunity in the region. It provides valuable insights into the extent of repressive measures employed against human rights defenders, journalists, and

civil society organisations across the region. Since the pandemic, defenders have disproportionately faced increased harassment, arbitrary arrests, and extrajudicial actions.

Our report details realities from Afghanistan, where the recovery from pandemic collided with the Taliban takeover; to Bangladesh, where abuse of power and curtailment of civil liberties became alarmingly rampant; and India, where religious minorities have been increasingly facing systemic discrimination. Meanwhile, the Maldives witnessed an even more shrinking of civic space; Nepal experienced reduced civil society engagement; Sri Lanka fell under a militaristic approach that suppressed fundamental freedoms; and Pakistan increased its surveillance against critical voices.

While the findings of our report are a sobering reminder of the fragility of fundamental freedoms and civic space in South Asia, these stories are also a testament to the unwavering resilience of defenders tirelessly working on their pursuit of justice, equality, and human rights for all.

FORUM-ASIA sincerely hopes that this report could inspire collective actions towards a future where no crisis—either human-caused or natural disasters—can ever be used to justify the erosion of fundamental freedoms and civic space.

Mary Aileen Diez-Bacalso

Executive Director

Asian Forum for Human Rights and Development (FORUM-ASIA)

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IMPLICATIONS ON CIVIC SPACE AND FUNDAMENTAL FREEDOMS

Overview

South Asia, comprising of eight countries — Afghanistan, Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan and Sri Lanka, is a highly populated region. There are about one-and-a-half billion people representing a wide range of ethnicities, cultures, and religions. While it does not account as one of the three main economic core areas of the world, over the recent years, the region—with the exception of Afghanistan—has increasingly been emerging to compete in with other economies with goods, services and labour are extensively traded.

However, despite these socio-economic progressions, it is important to note that South Asia's relationship with democratic governance has remained extremely complicated. The region has historically been beset by political instability. This can be predominantly due to its prolonged colonial period and the subsequent process of

decolonisation. This was then compounded by rising regional insecurities, boundary and territorial disputes and armed conflict along ethnic, religious, ideological and linguistic lines, resulting in widespread violations of civil, political, economic, social, and cultural rights, and by State and non-State actors.

Following the end of the colonial period, several South Asian countries such as Sri Lanka, Bangladesh, and Pakistan continue to experience tides of ethno-nationalism with the military paving an increasing role in civilian governance. Widespread democratisation through the 1980s and 1990s did shift the complexion of the region away from its undemocratic past, thereby, ushering rising hopes of a democratic wave.¹ As a result, constitutional and legislative protection of human rights and fundamental freedoms were acknowledged by the concerned governments with efforts being made to ensure basic improvements in civic spaces.

¹ Lindsey W. Ford and Ryan Hass, "Democracy in Asia," *Brookings*, January 22, 2021, <https://www.brookings.edu/articles/democracy-in-asia/>

South Asian countries started ratifying core international human rights treaties, which further obligated them to implement the standards prescribed through the adoption of appropriate national laws and policies.

For instance, all seven South Asian countries are party to the United Nations (UN) International Covenant on Civil and Political Rights, ICCPR (1976)²³; International Covenant on Economic, Social and Cultural Rights, ICESCR (1976)⁴⁵; Convention on the Elimination of All Forms of Discrimination against Women, CEDAW (1981)⁶⁷; Convention on the Rights of the Child, CRC (1990)⁸⁹; among several others.

Despite this seemingly big step, which mandates countries to develop domestic laws that are closely aligned to the international principles of human rights specified in these treaties, South Asian member States largely failed to mirror these values into their national sphere. They continue to deny access to justice and protection to their citizens. This non-adherence can, however, be accounted to the the non-binding content specified in the treaties coupled with non-ratification, the lack of political will, institutional failures, and a lack of robust enforceability mechanisms.

Besides, these treaties considerably lack accountability mechanisms for evaluating a country's behaviour, thereby providing ample space for governments to continue prioritising the principles of sovereignty, integrity and non-

interference; time and again contending their compliance to the treaties even when investigations have contrasted their claim with the hard facts on the ground. Most developing countries such as South Asia, bureaucracies and courts—which are necessary to preserve the rule of law, have remained slow, ineffectual and corrupt in some countries.

Thus, in part owing to the overly ambitious goals that tend to ignore the reality of states to fully comply with the international standards and in part owing to democratic institutional failures, the South Asian region has continued to witness widespread violations of human rights treaty obligations.

In South Asia, governments and state authorities have tightened their grip on society and liberties of its people and have not shied away from imposing restrictions that severely curtail the civic spaces. As a result, South Asians, especially those working on the frontlines to promote and protect human rights and fundamental freedoms have often suffered at the hands of state and non-state actors. They are victims of extrajudicial killings, enforced or involuntary disappearance, arbitrary arrest, detention and torture. Intimidation tactics have now escalated into digital spaces where hate speech, fake news, and smear campaigns target human rights defenders, especially women, gender, religious and ethnic minorities.

2 The International Covenant on Civil and Political Rights is a multilateral treaty that commits nations to respect the civil and political rights of individuals, including the right to life, freedom of religion, freedom of speech, freedom of assembly, electoral rights and rights to due process and a fair trial.

3 United Nations Treaty Collection, "International Covenant on Civil and Political Rights," *United Nations Treaty Collection*, Status at November, 17, 2022. https://treaties.un.org/Pages/ViewDetails.aspx?chapter=4&clang=_en&mtdsg_no=IV-4&src=IND

4 The International Covenant on Economic, Social and Cultural Rights (ICESCR) obliges states parties to take as much action as their available resources allow to progressively achieve the full realisation of the rights it guarantees (the principle of progressive realisation).

5 United Nations Treaty Collection, "International Covenant on Economic, Social and Cultural Rights," *United Nations Treaty Collection*, Status at November, 17, 2022. https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-3&chapter=4&clang=_en

6 The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) is an international legal instrument that requires countries to eliminate discrimination against women and girls in all areas and promotes women's and girls' equal rights.

7 United Nations Treaty Collection, "Convention on the Elimination of All Forms of Discrimination against Women," *United Nations Treaty Collection*, Status at November, 17, 2022. https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-8&chapter=4&clang=_en

8 United Nations Treaty Collection, "Convention on the Rights of the Child," *United Nations Treaty Collection*, Status at November, 17, 2022. https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-11&chapter=4&clang=_e

9 The United Nations Convention on the Rights of the Child is an international human rights treaty which sets out the civil, political, economic, social, health and cultural rights of children

This democratic backsliding has only increased further over the past recent years, especially since the onset of the pandemic resulting in the resurgence of illiberalism, and in some cases, expanding authoritarianism.¹⁰

For instance, in Pakistan, despite the two successive peaceful transfers of power in 2013 and 2018, the military continues to wield an immense influence in key civilian matters, limiting the scope of civic action.¹¹ Similarly, in India, the rise of the Hindu nationalist Bharatiya Janata Party's (BJP) in 2014 led to the hardening of authoritarian tendencies with the historically vibrant civil society persistently coming under attack, bringing about grave implications particularly for the minorities of the country.¹² The party's re-election in 2019 intensified this trend, especially with the revocation of Jammu and Kashmir's (J&K) autonomous status that essentially erased the civic spaces and constitutional freedoms enjoyed by its citizens.¹³

These developments have been followed by precipitous changes in the scope of enjoyment of the three fundamental freedoms—of expression, association and peaceful assembly, despite domestic and international recognition of these rights as the most fundamental ones. Simultaneous to this creation of a hostile environment, attempts to silence critical and dissenting voices have also increasingly been observed in each South Asian country by both state and non-state actors. This has taken the form of threats and harassment, physical attacks, doctored prosecution, and incarceration

with victims predominantly including human rights defenders, journalists, civil society activists, political opposition and dissenting groups, etc.

In India, counter-terrorism laws such as Unlawful Activities Prevention Act 1967 (UAPA) have been used to criminalise freedom of expression with the police in 2018 arresting several leading human rights activists, including Varavara Rao, Vernon Gonsalves, Gautam Navlakha, Sudha Bharadwaj and Arun Ferreira.¹⁴ The writers and activists were also subject to a smear campaign that sought to paint them as "Urban Naxals".¹⁵

Similarly, the Bangladesh government arbitrarily arrested a well-known photographer, Shahidul Alam, who was forced to endure detention for more than 100 days for speaking out against the authorities and was charged under the infamous Section 57 of the Information and Communication Technology Act.¹⁶ Another preferred weapon to muzzle critics and stymie the freedom of expression, especially in cyberspace, is the Digital Security Act 2018, under which, Shafiqul Islam Kajol was charged for circulating "objectionable" information about ruling party leaders.¹⁷

These emblematic cases provide a preview of the magnitude of the crisis that afflicts each country in the region. Redressals of such violations are in fact, all too frequently denied, despite *de jure* protection provided by each country's Constitution, alongside a complex web of legislation, regulations, and statutory and constitutional bodies and institutions.

10 Murali Krishnan, "Free speech 'under increasing threat' in South Asia," *Deutsche Welle*, October, 23, 2018. <https://www.dw.com/en/free-speech-under-increasing-threat-in-south-asia/a-46007385>

11 Frédéric Grare, "The Challenges of Civilian Control Over Intelligence Agencies in Pakistan," In *Intelligence, National Security and Foreign Policy: A South Asian Narrative*, ed. A.S.M. Ali Ashraf (Dhaka: Bangladesh Institute of Law and International Affairs, 2016), 225-338

12 Milan Vaishnav, "The BJP in Power: Indian Democracy and Religious Nationalism," *Carnegie Endowment for International Peace*, April 04, 2019, <https://carnegieendowment.org/2019/04/04/bjp-in-power-indian-democracy-and-religious-nationalism-pub-78677>

13 Laxmi Murthy and Geeta Seshu, "Silence in the Valley: Kashmiri Media After the Abrogation of Article 370," *EPW Engage*, October 26, 2019, <https://www.epw.in/engage/article/silence-valley-kashmiri-media-after-abrogation>

14 Biraj Patnaik, "2018 was an Annus horribilis for human rights in South Asia," *DownToEarth*, December 11, 2018, <https://www.downtoearth.org.in/news/governance/2018-was-an-annus-horribilis-for-human-rights-in-south-asia-62444>

15 Patnaik, "2018 was an Annus horribilis for human rights in South Asia,"

16 Olivier Laurent, "Bangladeshi photographer Shahidul Alam arrested over 'provocative comments'," *Washington Post*, August 6, 2018, <https://www.washingtonpost.com/world/2018/08/06/bangladeshi-photographer-shahidul-alam-arrested-over-provocative-comments/>

17 Ali Riaz, "How Bangladesh's Digital Security Act is Creating a Culture of Fear." *Carnegie Endowment for International Peace*, December 9, 2021, <https://carnegieendowment.org/2021/12/09/how-bangladesh-s-digital-security-act-is-creating-culture-of-fear-pub-85951>

Thus, there remains no doubt about the fact that for a region where state overreach and repression have already been major concerns, the onset of the COVID-19 pandemic in 2020 only worsened the situation. COVID-19 in fact, brought about a political opportunity for many South Asian governments to extend their strong- over civil society through the introduction of a new wave of crackdowns. These escalated crackdowns on fundamental rights and freedoms of its people including freedoms of expression, association and peaceful assembly, targeting critics of their responses to the pandemic.

According to Agnès Callamard, Secretary General of Amnesty International, “COVID-19 has brutally exposed and deepened inequality both within and between countries, and highlighted the staggering disregard our leaders have for our shared humanity. Decades of divisive policies, misguided austerity measures, and choices by leaders not to invest in crumbling public infrastructure, have left too many easy prey to this virus.”¹⁸

Consequently, while governments across South Asia have cynically exploited the pandemic to escalate crackdowns on the freedoms of expressions and peaceful assembly, existing inequalities in the enjoyment of socio-economic rights and a culture of entrenched discrimination have left groups including ethnic minorities, internally displaced persons (IDPs), refugees, prisoners and women disproportionately affected by the pandemic.

Given this context, the following report will therefore, examine the extent of the impact of regressive measures and tactics employed against human rights defenders (HRDs), journalists, and civil society organisations (CSO) in Afghanistan, Bangladesh, India, Maldives, Nepal, Pakistan, and Sri Lanka since the onset of the first COVID-19 lockdown in the respective countries until 2021.

This study builds on the past research work commissioned by FORUM-ASIA, in particular the research reports on the state of impunity in each of the seven countries; seven country-level advocacy

briefs which provides a snapshot of the key incidents and implications vis-à-vis fundamental freedoms in the region; quarterly Repressive Law Mapping briefs covering Bangladesh, India, and Pakistan; and the quarterly update report on Maldives for CIVICUS.

The findings of the research will inform advocacy for the protection of fundamental freedoms and civic space at the national and regional levels. The documentation of these violations of the fundamental freedoms combined with the failure of national institutions to redress the violations will be crucial in amplifying advocacy for the establishment of a regional human rights mechanism in South Asia.

Key Trends & Developments

In South Asia, the COVID-19 pandemic has not only revealed the terrible legacy of deliberately divisive and destructive policies that have continued to pave the way for serious human rights violations. It has also served as an opportunity for leaders to initiate control measures, that facilitate fresh attacks on fundamental freedoms and civic space.

This section, therefore, highlights some of the key findings that have been identified during the study of each country’s COVID-19 pandemic situation and suggests how governments weaponized the crisis to ramp up assault on the democratic rights of its citizens.

Afghanistan

- For a country still recovering from the consequences of four decades of war, the onset of the COVID-19 pandemic posed a major risk to the people of Afghanistan, especially in the context of political instability, humanitarian crises, and fragile government systems.
- The virus in fact, surfaced in Afghanistan at a time when the country was already enmeshed with a failing economy, droughts, food shortages, massive displacements, widespread poverty, and an uncertain landscape for recovery—all of

¹⁸ “South Asia: Covid-19 hits marginalized hardest as pandemic used to escalate repression, Amnesty International, April 7, 2021, <https://www.amnesty.org/en/latest/news/2021/04/south-asia-covid-19-hits-marginalized-hardest-as-pandemic-used-to-escalate-repression/>

which brought about grave consequences for the people of the country, especially for those belonging to marginalised groups.

- Despite Afghanistan's active engagement in peace talks over the years, violations of international humanitarian and human rights law, including war crimes, and other serious human rights violations and abuses with impunity remained common in Afghanistan with increase in human rights defenders wounded and/or killed.
- In the context of these volatile circumstances, the COVID-19 crisis combined with the political advancements made by the Taliban only unleashed a new wave of repression of fundamental freedoms, indiscriminate and targeted killings of human rights defenders, women activists, journalists, health and humanitarian workers, and religious and ethnic minorities, the country plunged into a severe humanitarian and political crisis.
- Although the militant group promised to maintain fundamental human rights and ensure freedom, the Taliban¹⁹—in just a few days of reclaiming power—was engaged in systemic and widespread reprisals of HRDs, journalists, civil society activists, judges, and government officials, especially women and those belonging to minority groups.
- For instance, The Taliban imposed hard-line restrictions on women, clamped down on protests by women, using excessive force, including live ammunition, whips, batons, and tear gas to disperse them. Women's rights activists were in fact, forcibly disappeared and brutally tortured as well for protesting the regime's policy to erase women from public life.

- In another display of their authority, the Taliban dissolved key oversight mechanisms and institutions, and suspended critical laws and policies that upheld human rights and fundamental freedoms. For instance, the Ministry of Women Affairs was replaced by the Ministry of Vice and Virtue²⁰ that is responsible to enforce the group's austere interpretation of Sharia and punish those who act otherwise.
- Curtailing freedom of expression and access to information, the Taliban administration forced media outlets—such as the famous TOLO News among others—to resort to censorship as a means of surviving and avoiding broadcasting news that is content-sensitive.
- The Taliban also excluded former judges and women from its justice sector thereby, replacing them with its own men who are supposed to deliver decisions that are in line with their interpretation of Sharia law, making access to justice nearly impossible.

Bangladesh

- As per the Global State of Democracy Report 2021—published by the International Institute for Democracy and Electoral Assistance of Sweden, Bangladesh has been classified as a continuing authoritarian state since 2014, where massive abuse of power and draconian laws have severely impacted lives, livelihood and civil liberties of people.
- However, this catastrophic human rights situation became more evident in the lead up to the country's 11th parliamentary election (2018), which had witnessed electoral fraud²¹ including rigging ballot stuffing, where same individuals casted multiple votes.
- The number of enforced disappearances and extrajudicial killings increased considerably during the pre-election months with tens of thousands of innocent individuals arbitrarily detained for prolonged periods. While the

19 "Taliban vow to respect women, despite history of oppression", AP News, 18 August 2021 <https://apnews.com/article/afghanistan-taliban-kabul-1d4b052ccef113adc8dc94f965ff23c7>

20 <https://www.aljazeera.com/news/2021/9/18/taliban-replace-ministry-for-women-with-guidance-ministry>

21 <https://time.com/5490744/bangladesh-elections-sheikh-hasina-rigging-allegations/>

criminal justice institutions collaborated with the ruling party to deny the right to free trial, the government's crackdown against the dissidents, journalists, HRDs, and political opponents remained widespread even in the post-election months.

- As a result of these prevailing practices and against the backdrop of successive rigged elections coupled with the systemic pattern of denying access to justice to the people, the mismanagement of the COVID-19 pandemic was rather obvious for Bangladesh. The government in fact, took advantage of the health crisis to curb the freedom of peaceful assembly, association, expression and opinion, all of which were dealt with instant arbitrary detention and imprisonment.
- Given that the laws made in the pre-pandemic era were equipped with vague definitions that empowered law enforcement agencies with immense control to initiate repressive action, the Bangladeshi government consistently abused these draconian laws, such as the Digital Security Act 2018, Anti-Terrorism Act 2009, Information and Communication Technology Act 2006, Special Powers Act 1974, among several others during the COVID-19 pandemic.
- Similarly, exploiting pre-existing laws, the authorities also adopted policies during the pandemic that brought about additional implications for the civic spaces and human rights scenario, thereby, placing underprivileged segments of the population on the verge of extinction.
- The pandemic has therefore, once again highlighted that Bangladesh's curtailment of civic spaces and human rights violations is neither limited to the law nor the policies but is in fact, rooted in the illegitimacy of the incumbent government, which has renewed its tenure through consecutively rigged elections. After all, an illegitimate government without having a system of checks and balances only aims to exercise authoritarianism to promote kleptocracy by using repressive laws and policies to silence the dissents.

India

- Ever since its election in 2014, the majoritarian and totalitarian tendencies of the BJP have severely impacted freedom of association and peaceful assembly, speech and expression, and the rule of law, shrinking the civil space in India.
- The COVID-19 outbreak thus, provided the government with an additional opportunity to resort to the use of special measures that augmented the party's power, drastically paring down on fundamental freedoms.
- For instance, the Uttar Pradesh government pressed criminal charges against citizens and journalists, who reported on the authorities' mismanagement of oxygen supplies in hospitals and threatened to act under the National Security Act 1947 as well as the Gangsters Act 1986 against 'anti-social elements' for 'spreading rumours'.
- The pandemic also fostered an opening to underline the existing fault lines of communal 'othering' and stigmatization of religious minorities within the country. In fact, shortly after an outbreak in a mosque²², the Muslims were widely perceived as "super-spreader" of the virus, were denied healthcare and singled out to prove that they were COVID negative.
- Counterintuitive to democratic aspirations, citizens' participation, transparency, and accountability, by amending the Foreign Contribution Regulation Act (FCRA) 2010, the government exercised excessive clampdown on CSOs and NGOs that were already grappling with a lack of international and domestic funding and were overburdened to provide COVID-19 assistance. —
- With the aim to intimidate and silence CSOs as well as individual defenders, hampering their ability to mobilise and constructively criticise the government for rights violations, the amendment tightened the state's hold on foreign funding received by these organisations through imposition of restrictions, lengthy registration process and harassing the members of the civil society.

²² <https://apnews.com/ad2e96f4caa55b817c3d8656bdb2fcbd>

- The new draconian law resulted in the licenses of around 6,000 CSOs being suspended during the third COVID-19 wave alone, shrinking democratic space and raising concerns about the future of the rights movement in the country.

Maldives

- Despite the government's repeated claims that Maldives salvaged democracy in 2018, civic spaces have steadily been shrinking even prior to the pandemic and continue to diminish in the post-pandemic era, crushing an already weak civil society and submerging them into silence or self-censorship.
- Restrictions imposed under the Public Health Protection Act (PHPA)—including lockdowns, inability for organisations and legal practitioners to offer services through the normal places of work, and the limitations on general movement within the country and cities/islands—made it extremely difficult for CSOs and HRDs to conduct their activities or organise themselves.
- While HRDs, WHRDs, CSOs, and legal practitioners were constantly being targeted for not following the brutal restrictions imposed in the name of the pandemic, the government and political parties remained immune to disregarding the PHPA measures when conducting their political campaigns and official promotions.
- Those who attempted to resist and continue to use civic spaces as part of their fundamental freedom were persecuted, intimidated, and arbitrarily arrested by the police with no space for redress. As a result, there were frequent police crackdowns on protests, particularly those organised by the opposition political groups with the police citing the Freedom of Peaceful Assembly Act 2016 and COVID-19 health guidelines as an excuse. Even media personnel who were reporting on protests were frequently attacked and harassed by the police.

- The new Maldives Police Service Act, enforced in March 2021 that called for the establishment of an independent statutory body for overseeing police conduct largely failed to meet its cause as most cases of police brutality or dispersal of peaceful protests were not even been investigated.

Nepal

- In Nepal, the repressive government behaviour combined with brutal COVID-19 measures—such as lockdowns, shutting down of public spaces, restriction on inter-city mobility gave rise to grave humanitarian issues and concerns for the protection of HRDs and civil society organisations.
- Quarantine centres were often unhygienic, threatening the lives of many migrant workers who were kept there while frontline workers including health care providers and journalists were ill-treated. There were no proper provisions made to ensure an uninterrupted access to healthcare facilities to the public—all of which caused serious human rights violations especially for those belonging to the marginalized communities.
- The government and its ministries such as the Ministry of Home Affairs and district administration offices including the Inland Revenue Department—considerably restricted the scope of civil society engagement within the country by altering CSO's legal framework and standing through the establishment of barriers for the renewal of the organisation's registration, tax clearance and tax exemption certificate.
- The authorities continued to use the Electronic Transactions Act 2006 to arbitrarily detain individuals, human rights defenders, including journalists, particularly targeting those critical of the government and of the leaders of the ruling party.
- While it can be argued that the legal space has not really changed in Nepal after the pandemic, the shrinking of civic spaces can majorly be accounted to the autocratic nature of governance that has led to the subjugation of HRDs and WHDRs risking democracy and civil liberties.

Sri Lanka

- Nepotism, corruption and poor administration standards—have not only mirrored in the development of COVID-19 response strategies but have also resulted in a huge socio-political unrest and a devastating economic crisis.
- For instance, the popular public perception, that viewed an authoritarian ruler supported by military discipline as a solution for everything was increasingly observed in the COVID-19 context and in the development of policy measures that expedited control over fundamental rights and economic downfall of the country.
- The onset of the COVID-19 emergency in the country thus saw an overwhelming intervention of the army in decision-making processes, disregarding the expert views offered by the health professionals. The repeated military interventions progressively facilitated the government's suppression of people's fundamental rights and an unequal application of the law based on ethnicity, religion, and political views using arbitrary laws and administrative procedures.
- Arbitrary arrests of protesters who followed all health guidelines and forcing them to COVID quarantine centres without the directions of the court or a Public Health Officer demonstrated the police exceeding their statutory powers under the Penal Code and the Police Ordinance.
- The excessive militarization and arbitrary behaviour of security forces made marginalised communities, including ethnic and religious minorities, people with disabilities, and gender minorities increasingly vulnerable during COVID-19, constituting them as the primary victims of irrational restrictions and prohibitions.
- Specific targeting and arbitrary arrests of Muslim activists, politicians, businessmen, and professionals, based on false accusations—was common in the Sri Lankan pandemic era.

Pakistan

- The COVID-19 pandemic massively accelerated the changing dynamics of Pakistan's civic spaces, reinforcing the government's ongoing aversion to rights-based actors that foster vitriol and mass gathering of sectarian groups.
- The emergency enabled the government to strip the Pakistanis off their right to privacy and increase surveillance, in the name of controlling the spread of the virus by using a 'track and trace' technology, an opportunity for both state and non-state actors to collect citizen's personal information and use it for their own benefit.
- To further limit freedom of expression and squash criticism, the government also amended the country's cybercrime stature by approving the Pakistan Electronic Crimes Act 2016 (PECA), which makes online "defamation" of authorities, including the military and judiciary, a criminal offense punishable by harsh penalties, thereby, putting journalists, HRDs, anti-government actors at a particular risk of prosecution.
- As a result, those who wished for broader civic spaces and freedoms, whether to challenge discriminatory blasphemy laws, resurrect student unions, or demand the rights of women and religious minorities, faced charges of sedition and blasphemy under PECA.
- The government also stifled civil society and controlled the information to the media during COVID-19.

Conclusion

Extrapolating from these findings, one can clearly state that commitments to uphold human rights standards have gradually been faltering in South Asia for several years with some member states falling back into the hands of authoritarianism, the COVID-19 pandemic has accelerated the erosion of the democratic fabric on which protection of human rights and fundamental freedom ultimately depends. South Asian governments have in fact, used the COVID-19 outbreak as an opportunity to further entrench repressive measures and far overreach the limits in place under international human rights laws.

One such right that came under unprecedented attack throughout the pandemic was freedom of expression, the ability to hold your own opinions and express them freely without government interference, thereby, forming the cornerstone of any democracy. This was the case despite the commitment to the Universal Declaration of Human Rights as well as its incorporation as fundamental rights within the independent Constitutions of several South Asian countries.

Yet, to strengthen their control and to silence critics, the governments across South Asia criminalised every form of expression under the guise of the pandemic, from citizens posting political messages on social media to journalists or HRDs highlighting the government's mismanagement of the health crisis.

As per a report prepared by the Rights and Risks Analysis Group, 55 journalists alone faced arrest, registration of cases, summons or show cause notices, physical assaults, alleged destruction of properties and threats for reportage on COVID-19 in India for exercising freedom of opinion and expression during the national lockdown from March 25 to May 31, 2020²³. Similarly, on 1 April, Sri Lanka's police announced that it would arrest those who disseminate "false" or "disparaging" statements about government officials combating the spread of the COVID-19 virus. In the days that followed, the country witnessed hundreds of arbitrary arrests and detention of human rights activists, journalists and opposition political party members.

However, besides freedom of expression, the right to information as recognised by resolution 59 of the UN General Assembly 196, Universal Declaration of Human Rights 1948—which is the freedom "to seek, receive and impart information and ideas through any media and regardless of frontiers"²⁴ was also drastically curtailed in times of the pandemic, thereby, bringing about a devastating impact on people's ability to access accurate and timely information that could help them cope with the health crisis.

23 "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>

24 Freedom of Information, United Nations and the Rule of Law, <https://www.un.org/ruleoflaw/thematic-areas/governance/freedom-of-information/>

The South Asian governments' reliance on censorship and punishment in fact, reduced the quality of information reaching people with new pieces of legislation being brought out to shut down independent reporting. As a result, communication channels were frequently targeted, social media platforms were increasingly censored and media outlets were forced to shut down.

This was the case in Afghanistan where the Taliban brought out new measures that extensively suppressed an already weakened media. Since then, several journalists have been at risk with many of them being tortured and executed as part of the Taliban's attack on media; female journalists have been forced to cover their face while reporting news; and an estimated²⁵ 31 out of 543 media outlets have closed since the onset of the pandemic. Meanwhile, in Bangladesh, journalists, mainstream media outlets, and news editors have been increasingly silenced under the Digital Security Act based on providing "false information" or spreading "rumours" related to COVID-19 even when the information provided by them proved to be helpful for the citizens.

There are many other examples where governments in South Asia used COVID-19 as a pretext to curb democratic rights and freedoms of individuals. The pandemic also provided an additional cover for some governments to go after political activists and to stifle any criticism of government performance during the crisis.

As many South Asian governments ramped up repression during the COVID-19 pandemic, people across the region continued to fearlessly stand up for their human rights. But despite following protocols, they were tortured, arbitrarily arrested and detained by police authorities for defying COVID-19 guidelines. In India, dozens of activists, the majority of whom were Muslims, were detained under the shadow of COVID-19 for protesting the divisive citizenship law²⁶. In Pakistan, health workers were beaten and detained for peacefully protesting the lack of availability of personal protective equipment. In Sri Lanka, thousands of people were arrested for violating the COVID-19 curfew without any legal basis, while carrying out a Black Lives Matter solidarity protests.

As a result of these repressive measures and exploitation of pre-existing laws, today, increased surveillance, restrictions on free expression and information, and limited public participation have become increasingly common across South Asia, putting fundamental rights of people in excessive danger. Thus, these measures pose a huge challenge for the pro-democracy and human rights groups in the future, especially for those belonging to the marginalised communities.

25 <https://rsf.org/en/taliban-takeover-40-afghan-media-have-closed-80-women-journalists-have-lost-their-jobs>

26 "Stop the false accusations and arrests of human rights defenders in the Delhi riots case" FORUM-ASIA, 24 September 2020 <https://www.forum-asia.org/uploads/wp/2020/09/Press-Statement-India-Delhi-riots-arrests-YL-MR-RK-ANNI-HRD-CMT-RK-FINAL-Omer-approval.pdf>

AFGHANISTAN: THE COMPOUNDING EFFECT OF COVID-19 AND TALIBAN ON HUMAN RIGHTS DEFENDERS, JOURNALISTS

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Summary

This report looks at the human rights situation—as compounded by the onset of the COVID-19 pandemic and the Taliban’s takeover and repressive rule—in Afghanistan. The persistent human rights violations and diminishing civic space for human rights defenders, journalists, and human rights groups will thus, remain the primary focus of this research. The COVID-19 pandemic triggered growing economic challenges for the poorest of the poor or less-income families, dried up financial support to civil society organisations (CSOs), and disrupted public access to timely information on the pandemic. Several months of lockdown during the pandemic, in fact, impacted women and girls’ access to education, particularly for those belonging to marginalised families including those residing in

rural areas. It also increased child marriages and gender-based domestic violence against women and children. Many organisations addressing domestic violence limited their services or closed during the lockdown that largely undermined women’s access to justice.

However, with the Taliban forcefully taking control over Kabul on 15 August 2021, after an abrupt withdrawal of the US troops, a new dehumanising chapter began for Afghanistan, which once again dramatically dragged the country into its dark and violent past of the 1990s when the militant group first came to power. The dissolution of democratic institutions, suspension of progressive laws, and their replacement with draconian policies caused a full-blown rule of law crisis in Afghanistan. It saw restrictions on freedom of expression, association,

and peaceful assembly, coupled with growing reprisal attacks. Discrimination against other ethnic groups, including the Hazaras, Tajiks, Uzbeks, Turkmen, Hindu, and Sikh communities, and isolation and denial of women and girls from public life are compelling examples of critical regressions caused by the Taliban regime in Afghanistan.

Introduction

The outbreak of COVID-19 and the subsequent takeover of the Taliban in Afghanistan have had immense economic and humanitarian ramifications. The former happened when Afghanistan was already enmeshed with a staggering economy and an uncertain landscape for recovery while the latter added fuel to the fire by exacerbating the COVID-19-induced socio-economic and political crisis, further pushing the country to the very brink of collapse. With its first case being recorded on February 9, 2020, the COVID-19 pandemic caused sharp economic contractions in Afghanistan that primarily resulted from border closure, movement restrictions, months of lockdown, and disruptions of supply chains at the national, as well as the global level¹. Prolonged lockdowns, in fact, not only affected people's employment but also forced non-governmental organisations (NGOs)—mainly human rights organisations—to downsize their activities or liquidate their operations.

In the meantime, the socio-economic impacts of COVID-19 also translated into the substantially dramatic deterioration of food insecurity and economic contraction in Afghanistan. Its economy shrank by 7.4 per cent in 2020, exacerbating poverty, reducing employment, and leading to a sharp decline in government revenues while bumping up the poverty rate to nearly 73 per cent during the same period².

To cushion the ramifications, the former Afghan government did introduce social relief programmes and provided food items, as well as relief packages to low-income households³. Yet, movement restrictions and months of lockdown curtailed the ability of civil society organisations (CSOs), human rights defenders (HRDs), and media outlets to undertake effective oversight, thereby, resulting in the misuse of a large proportion of humanitarian aid⁴.

Among other things, COVID-19 also put an additional strain on Afghanistan's already fragile healthcare system, which despite two decades of international support, was still ill-equipped to tackle a health crisis of such magnitude. The combination of overwhelmed healthcare centers, inadequate facilities, poor health services, and the (armed) conflict that was raging in parts of the country immensely impeded public access to even the most basic health services.

Meanwhile, the government's coping mechanisms to fight the health and humanitarian impacts of the pandemic were also undermined by obvious flaws. Widespread misinformation about the virus and the government's failure in conducting timely community awareness programmes, lack of resources, and corruption in the COVID-19 relief funds were among many factors contributing to a nationwide concern. The response measures to curb the spread of the virus, however, adversely impacted the capacity of CSOs to provide sufficient oversight over the government's COVID relief programmes to ensure transparency.

As Afghanistan was grappling with these challenges, on 15 August 2021, former President Ashraf Ghani fled the country, leaving a political vacuum behind that was eventually filled with the Taliban establishing their control over the government.

1 Qadir Sediqi, A., & Karimi, S., "Afghanistan Confirm First Coronavirus Case in Province Bordering Iran," *Reuter*; February 24, 2022, <https://reut.rs/3doYxTM>.

2 World Bank, "Hit Hard by COVID-19, Afghanistan Needs Continued International support," July 15, 2020, <https://bit.ly/3Uj06De>.

3 The World Bank, "COVID-19 Relief Effort for Afghan Communities and Households (REACH)," <https://bit.ly/3X3A9rC>.

4 Begzad, M., "Millions of Corruptions in Free Bread Distribution in Kabul (Persian)," 8 *AM Newspaper*; July 11, 2020, <https://bit.ly/3xyzMLG>.

Despite its promises to bring about a more moderate rule, the Taliban's takeover of Kabul brought with it far-reaching impacts on all parts of Afghan society. For instance, two days after forming its interim government, the Taliban declared a general amnesty to be offered to all former government members and those who worked with NATO forces and other international organizations⁵. Yet, the regime engaged in widespread reprisals against former members of the Afghanistan National Defense and Security Forces (ANDSF), HRDs, journalists, minority groups, and women activists⁶. Besides this, the Taliban also dissolved key oversight mechanisms and institutions and suspended critical laws and policies that upheld human rights and fundamental freedoms⁷.

These growing restrictions on Afghanistan's civic spaces, combined with intimidation, have enormously affected the ability of vulnerable and marginalised groups to speak up for their rights. These have also brought about a disproportionate impact, especially on the lives of women, girls, and ethno-religious minorities. However, Afghan women have raised their strong voices against these violations. In response to widespread human rights violations and injustices, several sporadic protests—often led by women—have taken place across the country⁸. But the Taliban fighters have continued to silence them, using tear gas, whips, direct shooting, and arrest, leaving no space for further public demonstrations⁹. It heavily curtails the civic space and fundamental freedoms of the Afghans people.

The Taliban's draconian rule and constant rollback of fundamental rights have, in fact, been so severe that people in Afghanistan have been forced to forget the COVID-19 pandemic and the challenges that it inflicted upon the community. It is against

this backdrop that this study attempts to explore the countering impacts of COVID-19 and the ensuing takeover by the Taliban on the human rights situation in Afghanistan. In doing so, the report first briefly touches upon the challenges caused by the COVID-19 pandemic and then reflects on the dire impacts of regime change on ethnic and religious minorities.

The report reviews restrictions on civic space and fundamental freedoms encompassing the rights to freedom of expression, assembly, and peaceful association. It subsequently highlights the suspension of democratic institutions and progressive laws and their replacement with the Taliban's repressive directives. It also presents a series of continued reprisal attacks and smear tactics by the Taliban to knock out any in-country resistance front or former member of Afghan security forces.

Methodology

This report has used a qualitative research methodology, relying on an in-depth analysis of secondary data. The information is collated from an extensive desk review of literature that spans across national and international websites, journals, magazines, newspapers, and social media. In addition, it has also referred to different laws and policies suspended by the de facto Taliban authorities, and their replacement with draconian policies. The review will thus particularly reflect on the dissolution of relevant institutions, and laws with disproportionate impacts on women and girls' rights and ethno-religious minority groups.

5 France 24, "Taliban Declares General Amnesty for Afghan Government Officials," August 17, 2021, <https://bit.ly/3UrPmCv>.

6 Amnesty International, "Afghanistan: Fresh Evidence of War Crimes During Collapse and Taliban Takeover," December 15, 2021, <https://bit.ly/3RC9xNm>.

7 Hakimi, H. & Dr. Gareth Price, G., "Afghanistan: One Year of Taliban Rule," *Chatham House*, August 15, 2022, <https://bit.ly/3Y6osBM>.

8 Aljazeera, "Taliban Disperses Afghan Women's March for Work and Freedom," August 13, 2022, <https://bit.ly/40tWgdC>.

9 Ibid.

Overview of Human Rights Situation in Afghanistan

Countering impacts of COVID-19

Afghanistan has been the scene of some of the deadliest conflicts in four decades in a row, damaging infrastructure and causing a widespread humanitarian crisis. Though the post-2001 political order largely reduced the severity of the problem, the military drawdown of foreign troops in 2014 and the surge in Taliban attacks against government and civilian targets, largely impacted the livelihoods in Afghanistan.

Continued fighting between the Taliban and the fallen Afghan government security forces across the provinces prompted mass displacement, choking the country's unstable economy and depriving people of access to essential services. Amid these politico-economic challenges, the outbreak of the novel COVID-19 pandemic significantly exacerbated the situation, deepening the humanitarian crisis and squeezing Afghanistan's already weak health system. Due to several months of market shutdown and movement restrictions, the pandemic reinforced structural inequalities and impacted access to basic services, mainly for women and girls, and marginalized communities.

The closure of schools and universities due to the pandemic disrupted access to education and reinforced domestic violence against women and girls. Families with better economic conditions facilitated online courses for their children, while the majority of low-income families failed to bear the online courses, compounding the existing inequalities.

These low-income families underwent severe economic shocks and loss of daily wages. Data suggest that these daily-wage-dependent families are more likely to be compelled to relieve financial crises through child labour, forced marriages, and child marriages¹⁰. Most lactating mothers without adequate access to nutritious food and healthcare facilities have faced enormous harm with their newborn children facing malnutrition¹¹.

With the emergence of the pandemic in neighbouring countries, hundreds of thousands of Afghan families returned to Afghanistan from neighbouring countries such as Iran and Pakistan, creating an even greater burden on the struggling health, economic and education systems. The first COVID-19 case was recorded on February 9, 2020, when a 35-year-old male tested positive after returning from Iran¹². Following the spread of the virus, it led to a growing use of hate speech against returnees from Iran and Pakistan, labeling them as the source of the pandemic in Afghanistan¹³.

COVID-19 and increased gender-based violence and inequality

Mirroring global trends, the pandemic hugely affected women's rights in Afghanistan, with social norms impeding their access to justice, and health care, an increase in domestic violence, and economic inequality¹⁴. A separate needs assessment carried out by Oxfam also confirms that 97 percent of female respondents informed of a significant rise in gender-based violence since the outbreak of the pandemic throughout 2020 in Afghanistan¹⁵.

To quote an Afghan activist, 'I think Afghan women are vulnerable to domestic violence. Violence will increase during this emergency and quarantine time. There is much pressure on men due to not

10 UNICEF, "Girls Increasingly at Risk of Child Marriage in Afghanistan," November 12, 2021, <https://shorturl.at/fgQYZ>

11 Human Rights Watch, "Gender Alert on COVID-19 Afghanistan," October 14, 2020, <https://bit.ly/3VPT2yt>.

12 The Lancet Infectious Disease, "The First COVID-19 Case in Afghanistan Acquired from Iran," March 23, 2020, <https://shorturl.at/cklno>

13 Anadolu Agency, "Afghanistan: Returnees from Iran are the Main Factor for COVID-19 Outbreak," March 24, 2020, <https://bit.ly/3E0RXgc>.

14 Oxfam, "A New Scourge to Afghan Women: COVID-19," April 2020, <https://bit.ly/3xnF24e>.

15 Ibid.

having a livelihood and losing family incomes. Another reason for violence will be that men are full-time at home and will be more sensitive to women's behaviour.¹⁶

The evidence also shows that the stress experienced by male heads of household losing employment opportunities, caused them to become increasingly violent at home with their wives and children. Many offices supporting gender-based domestic violence cases limited their services or closed during the pandemic, thus, exposing more women and girls to violence, and leaving them with no avenues to report domestic abuse¹⁷.

The Afghanistan Independent Human Rights Commission established a telephone complaints system in response to this challenge; however, remote filing of complaints was complicated for women who did not have access to a personal mobile phone¹⁸.

Women's declined ability to earn money during COVID-19 greatly limited their economic independence and disproportionately impacted their economic well-being and financial capacity, especially female school teachers. Women working in the private sector and those previously involved in small income-generating activities, such as dairy production, agriculture, and handicrafts became unemployed and or received unpaid leave¹⁹. On the other hand, the rise of basic commodities put them at additional risk of economic challenges. Female-headed households and widows living without men faced an increased burden to care for their family members²⁰. Most of these low-income families owned limited coping mechanisms to sustain themselves during the lockdown.

As a result, an increase in forced marriages and the selling of daughters became the only surviving alternatives²¹.

Moreover, in March 2020, all schools and educational institutions in Afghanistan were closed, as a measure to curb the spread of the COVID-19 virus. As a result, more than 9.5 million children in public schools and 500,000 children enrolled in community-based education classes, in addition to hundreds of thousands of university students were left out of schools and universities for more than nine months²². When schools reopened in November 2020, many families still preferred their children to remain at home due to the high risk of the pandemic and poor health protection mechanisms across educational institutions. The closure of schools and universities further limited access to education for children, with disproportionate consequences for female students. It put girls and young women at increased risk of numerous cases of abuse, such as child marriage, exploitation, child labour, early pregnancy, and other gender-based violence²³. In fact, schools and universities provide a space for students, especially female students to remain safe from much of the domestic violence that happens if they spend much of their time at home.

Impacts of COVID-19 on Freedom of Expression

The pandemic also severely impacted the right to freedom of expression and civic space in Afghanistan, disrupting further access to information, particularly at the hands of government entities. For instance, most government spokespersons were not available to provide timely information, either to educate people about the pandemic or to counter misinformation surrounding the virus and/or update the public on the deteriorating security situation as the Taliban were capturing cities.

16 Ibid.

17 Hossaini, K., "COVID-19 in Afghanistan: The Effects of the Pandemic on the Private Lives and Safety of Women at Home," *Afghanistan Analysts Network*, October 1, 2020, <https://bit.ly/40WFios>.

18 Ibid.

19 Oxfam, "A New Scourge to Afghan Women: COVID-19," April 2020, <https://bit.ly/3xnF24e>.

20 Ibid.

21 Ibid.

22 Human Rights Watch, "Gender Alert on COVID-19 in Afghanistan," October 14, 2020, <https://bit.ly/3EaTQHh>.

23 Ibid.

According to NAI, an organisation supporting open media in Afghanistan, the former Afghan security sector, justice sector, and the Office of the President were characterised among the worst entities in sharing information with the public²⁴. In the meantime, media outlets were also forced to downsize their operations with most entertainment TV programmes being temporarily stopped and a large number of media workers being forced to go on unpaid leave²⁵.

When the pandemic was at its peak, the intra-Afghan peace process with the Taliban aimed at navigating a political settlement for the country's protracted conflict was underway in Qatar. For an inclusive peace process, different spectrums of Afghan society, including women, youth, and CSOs, should have been meaningfully involved. However, the report by the Afghanistan Independent Human Rights Commission shows the pandemic significantly reduced the role of the Afghan public to have a say in the peace process as gatherings were banned due to the pandemic risk²⁶. Afghanistan also failed to introduce an online mechanism to help people share their demands and concerns over the peace talks.

CSOs were also suffering from economic shortfalls due to the pandemic restrictions. Many CSOs—advocating for human rights and freedoms—were forced to either downsize their operations or close altogether owing to the financial hardships induced by the pandemic. Several small-sized NGOs, in fact, requested the government to offer tax exemption and/or reduce the level of tax as a coping mechanism²⁷. But since the government was itself grappling with a cut-off in foreign aid, it failed to apply a short-term tax exemption policy, or undertake any other recovery measures to ensure the smooth functioning of the NGOs.

Human Rights under the Taliban

Women's Rights

Women and girls in Afghanistan have continuously faced discrimination throughout history. Yet, the past two decades have witnessed significant progress in terms of gender equality and fighting gender-based discrimination within the country. The 2004 Constitution of Afghanistan—now abolished—enshrined gender equality and prohibited any discrimination across gender, religion, and ethnic fault lines²⁸. The promulgation of the law on the Elimination of Violence and Discrimination Against Women and the ratification of its relevant International Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) was a significant step to protecting the rights of Afghan women. Also, the establishment of the Ministry of Women's Affairs and the Afghanistan Independent Human Rights Commission were among the critical oversight mechanisms for supporting the rule of law and fundamental rights.

Women's participation in education, economy, politics, and holding key positions at the national and subnational structures improved considerably. For example, before the Taliban took power, 69 female representatives and senators held seats in parliament in Kabul²⁹.

Since the Taliban takeover, there has been a dramatic regression in Afghan girls' and women's fundamental freedom and enjoyment of political, social, economic, and cultural rights. For instance, the Taliban imposed severe restrictions on women and effectively banned girls' education above grade six³⁰. As a result, today, Afghanistan is the only country in the world where girls are prohibited from accessing education. As per Richard Bennett, the UN

24 BBC, "The Right to Information in Afghanistan: Media Warns to Boycott Government," June 13, 2020, <https://bbc.in/3lqWrzf>.

25 Paiman, B., "COVID-19 Impacts on Afghan Media," *BBC News*, May 3, 2020, <https://bbc.in/3HJzber>.

26 Radio Free Europe, "Impacts of COVID-19 on Afghan Peace Talks," April 25, 2020, <https://bit.ly/3EybdSL>.

27 Delavari, F., "How to Tackle an Economic Crisis during the Pandemic?" *TOLO News*, <https://bit.ly/3W1tn5w>.

28 Global IP Legal Information, "The Constitution of Afghanistan," January 4, 2004, <https://bit.ly/3R9Z5dT>.

29 Kuntz, K., "A Parliament of Exiled Afghan Women in Athens," *Spiegel International*, August 2, 2022, <https://bit.ly/3PpGbAE>.

30 Rasmussen, Sune E., "Afghanistan's Taliban Ban All Education for Girls," *The Wall Street Journal*, December 21, 2022, <https://on.wsj.com/3jV6RXL>.

Special Rapporteur on the human rights situation in Afghanistan, ‘In no other country in the world have women and girls so rapidly disappeared from all spheres of public life, nor are they as disadvantaged in every aspect of their lives.’³¹

As part of gender-based apartheid restrictions, the Taliban have also violated women’s independence in how to dress in public. In May 2022, the Taliban issued a decree requiring women to cover their faces in public and directed them to remain in their homes unless necessary to be outside³². The directive bans women from traveling long distances of over 70 miles and also forces them to be accompanied by a male chaperone while travelling, visiting medical centers, and public institutions. The restriction has severely undercut women’s access to essential healthcare and economic services, and thus, exacerbated women’s livelihoods, mainly those of female-led households. Previously, COVID-19 had triggered an economic crisis, and now the Taliban authorities undermine women in their capacity to work; a decision that impacts them greatly.

Ethnic and Religious Minority Groups

The Taliban’s takeover has severely thrown the lives of vulnerable ethnic and religious minorities—mainly the Hazaras, Hindu, and Sikh communities—in disarray. Hazaras, a predominantly Shia minority, are historically one of the most severely persecuted groups in Afghanistan. Their places of worship, educational and medical centers, sports stadiums, and public transport have been systematically attacked, and their members have been arrested arbitrarily, executed summarily, and evicted brutally³³. Hazaras now face multiple forms of discrimination, affecting a broad range of their human rights, including economic, social, political, and cultural rights.

According to the UN Special Rapporteur, Richard Bennett, ‘The Taliban have appointed Pashtuns to senior positions in government structures in Hazara dominated provinces, forcibly evicted Hazaras without adequate prior notice from their homes, and imposed religious taxation contrary to Shia Islamic religious principles.’³⁴ In addition, since mid-August 2021, an increase in inflammatory rhetoric and hate speech against the ethnic Hazaras have been reported, both online and offline, and in some mosques during Friday prayers, including calling for Hazaras to be killed³⁵.

Other ethnic minorities such as Hindus and Sikhs have had similar miserable situations since the Taliban seized power, and most of them fled the country after suffering from targeted attacks on their shrines³⁶. Despite the Taliban’s hollow assurances to protect ethnic minorities, in practice, the regime has removed all other ethnic groups from key positions and decision-making processes, driving them to further isolation, exclusion, and discrimination.

Moreover, targeted attacks, extrajudicial killings, and enforced disappearances of civilians, and individuals belonging to the National Resistance Front (NRF) by the Taliban have been alarming, mainly across the Panjshir Valley, Andarab, and other provinces. According to Human Rights Watch, in Panjshir’s Khenj district, the Taliban have arrested 80 residents from the Tajik community, tortured and forced them to disclose information on the whereabouts of people from the NRF³⁷. The report also revealed that dozens of others in connection with NRF have been tortured and killed, and some bodies were displayed in public as warnings to others, signifying clearly an act of collective punishment, as well as an infringement of international human rights and humanitarian

31 United Nations Human Rights Office of the High Commissioner, “Afghanistan: UN Experts Warns Human Rights Crisis Presages Authoritarianism,” September 12, 2022, <https://bit.ly/3feQKbD>.

32 UN Women, “In Focus: Women in Afghanistan one Year After the Taliban Takeover,” August 15, 2022, <https://bit.ly/3BL8bYT>.

33 United Nations Human Rights Office of the High Commissioner, “Afghanistan: UN Experts Warns Human Rights Crisis Presages Authoritarianism,” September 12, 2022, <https://bit.ly/3feQKbD>.

34 Ibid.

35 Ibid.

36 The Hindu, “Desperate to Come to India, over 150 Sikhs in Kabul Gurdwara Counting Days since Taliban Takeover,” June 20, 2022, <https://bit.ly/3DRSvWz>.

37 Human Rights Watch, “Afghanistan: Taliban Torture Civilians in Panjshir,” June 10, 2022, <https://bit.ly/3RmB3wA>.

laws. This is a small pattern of such human rights violations committed by the Taliban.

Reprisals against Human Rights Defenders

Evidence shows that HRDs are under constant threats by the Taliban in Afghanistan. With dozens having been abducted or attacked, Afghan HRDs face systematic intimidation for their human rights work in the country. The Taliban's de facto authorities' governance can, therefore, be characterized by the 'recycle of violence, and a litany of human rights abuses and violations with full impunity' that has brought the country to the very 'brink of irreversible ruin.³⁸' Meanwhile, threats against women HRDs (WHRDs) are of particular concern. Being stripped off their rights to work and freedom of movement, WHRDs are subjected to kidnapping, arrest, torture, physical and psychological harm, house search, and intimidation of their family members³⁹.

While some HRDs managed to flee Afghanistan, others are seeking to leave the country due to the growing risk of reprisal and face numerous challenges. However, lack of valid travel documents, securing visas, and financial problems along with inadequate international support have largely put them at further risk of retaliation.

Reprisal against Former Members of Security Forces

A few days after taking power, the Taliban declared a 'general amnesty' for former members of Afghan National Security and Defense Forces (ANDSF) and other individuals who worked with national and international organisations⁴⁰. The promise, however, soon turned out to be false with hundreds

of reprisals against the ANDSF and members of their families and relatives alike⁴¹. An investigation by Human Rights Watch, in fact, shows the death of 100 former Afghan soldiers by the Taliban— across four provinces— within a span of three months after the takeover.⁴²

An investigation by the New York Times also exposed the Taliban's horrible revenge campaign against ANDSF. The investigation shows around 500 Afghan soldiers and police officers were murdered during the Taliban's first six months in power.⁴³ Given that it is impossible to verify all cases, the number of soldiers and police officers who have been slaughtered by the Taliban would likely be more than this. In part, it is because most families and relatives are too often too afraid to speak out, fearing retribution by the Taliban. Even if families and relatives were courageous enough to seek justice, where could they go considering that the Taliban fighters are now the police, court, and justice system, ruling over the country.

After proclaiming false amnesty, the Taliban leadership called on the ANDSF members to receive a 'forgiveness' letter but a screening or biometric verification process was required. This screening process was, in fact, 'a mere tactic to identify, detain and summarily execute or forcibly disappear them after the registration', the Human Rights Watch report says.⁴⁴ Enforced disappearances violate a range of fundamental rights guaranteed under the International Covenant on Civil and Political Rights which Afghanistan has ratified, including prohibitions against arbitrary arrest and detention, extrajudicial killings, torture, and other ill-treatment.

38 Amnesty International, "Stop the Roll Back on Human Rights in Afghanistan," 2021, <https://bit.ly/3UM9orP>.

39 International Federation for Human Rights, "Afghanistan: One Year after Taliban Takeover, Human Rights Defenders at Greater Risk than ever," August 12, 2021, <https://bit.ly/3SpNoBb>.

40 Aljazeera, "Taliban Announces 'Amnesty Reaches out to Women,'" August 17, 2021, <https://bit.ly/3SrRIQn>.

41 Amnesty International, "One Year of the Taliban's Broken Promises, Draconian Restrictions, and Violence," 2022, <https://bit.ly/3LTWUdk>.

42 Human Rights Watch, "No Forgiveness for People Like You: Executions and Enforced Disappearances in Afghanistan under the Taliban," November 30, 2021, <https://bit.ly/3UJhQrA>.

43 New York Times, "The Taliban Promised Them Amnesty. Then They Were Executed," April 12, 2022, <https://nyti.ms/3CuSyq6>.

44 Human Rights Watch, "No Forgiveness for People Like You: Executions and Enforced Disappearances in Afghanistan under the Taliban," November 30, 2021, <https://bit.ly/3UJhQrA>.

Repression of Civic Space

Freedom of Expression

Since taking power, the Taliban have made commitments to ‘freedom of expression in the light of Islamic and Sharia principles, as well as the country’s national interests.’⁴⁵ However, the right to freedom of expression and access to information has been curtailed rapidly. In September 2021, the notorious Ministry of Vice and Virtue (MVV) replaced the Ministry of Women Affairs to ‘correct the deeds, raise awareness, and reform and enlighten the peoples’ minds.’⁴⁶ The MVV is responsible to enforce the group’s austere interpretation of Sharia and punish those who act otherwise.

In the same period, the Taliban also introduced the new ‘11 Journalism Rules’ that largely opened the way to censorship and arbitrary decisions⁴⁷. Rules seven and eight facilitate a return to news control or even prior censorship, which has not existed in Afghanistan for the past twenty years. Based on these two rules, ‘Matters that have not been confirmed by officials at the time of broadcasting or publication should be treated with care’ and that ‘Matters that could have a negative impact on the public’s attitude or affect morale should be handled carefully when being broadcast or published.’⁴⁸

The risk is further enhanced by the last two rules—10 and 11—which force media outlets to adhere to a pre-designed form and thus prepare detailed reports in coordination with the Taliban-controlled Government Media and Information Center⁴⁹.

This unilateral decision has largely undercut the journalistic independence of Afghanistan and has opened the way to ‘tyranny and persecution’, according to Reporters Without Borders (RSF).⁵⁰ Previously, the fallen Afghan Republic approved the Mass Media Law in 2005, but with the regime change in 2021, the Taliban has yet to announce whether the Mass Media Law is still enforced or suspended.

Subsequently, in early 2022, the Taliban established the Media Offenses Verification Commission to assess media compliance with the so-called ‘11 Journalism Rules.’ Having no membership in the Commission, media workers named it as highly restrictive. Meanwhile, the de facto Ministry of Culture and Information, the Ministry of Interior, the MVV, the Intelligence Directorate, the Government Media Center, and the newly Established Media Offenses Verification Commission, all introduced a mix of restrictive guidelines pertaining to media outlets and journalists that—in general—have created immense confusion among the media workers.

As a result, media workers and journalists in Afghanistan continue to face pressure, threat, intimidation, and torture for their work by the authorities. The UN Special Rapporteur’s investigative report presents the deaths and injuries of 10 journalists, and over 100 journalists’ arbitrary arrests since August 2021.⁵¹ Credible accounts suggest that journalistic independence and press freedom have been curtailed significantly, and an atmosphere of fear has taken hold in all media outlets

45 Anonymous, “Congratulatory Message of Amir-ul-Mumineen Sheik-ul-Hadith Mawlawi Hibatullah Akhundzadah, the Supreme Leader of the Islamic Emirate,” June 6, 2022, <https://bit.ly/3SGtBx6>.

46 Khan, H., N., Francis, E., & Taylor A., “The Taliban is Bringing Back its Feared Ministry of ‘Vice’ and ‘Virtue’,” *The Washington Post*, September 8, 2021, <https://wapo.st/3CgSUAz>.

47 Reporters without Borders, “Afghanistan: 11 Journalism Rules Imposed by Taliban Open Way to Censorship and Arbitrary Decisions,” September 22, 2021, <https://bit.ly/3lzVc88>.

48 Ibid.

49 Reports Without Borders, “Afghanistan: 11 Journalism Rules Imposed by Taliban Open Ways to Censorship and Arbitrary Decisions,” September 22, 2021, <https://bit.ly/3W3otoo>.

50 Ibid.

51 United Nations Human Rights Office of the High Commissioner, “Afghanistan: UN Experts Warns Human Rights Crisis Presages Authoritarianism,” September 12, 2022, <https://bit.ly/3feQKbD>.

since the Taliban's return to power. The growing threats have forced many media outlets to resort to censorship as a means of surviving and avoiding broadcasting news that is content-sensitive, with many media workers having experienced detention and mistreatment by the Taliban.⁵² Afghanistan therefore, dropped from 122nd to 156th place in the World Press Freedom Index presented by RSF in April 2022.⁵³

Additionally, in late December 2021, the RSF in collaboration with the Afghan Independent Journalists Association also confirmed the closure of 231 media outlets since the power seizure by the Taliban.⁵⁴ Both the country's economic collapse and restrictive directives and surveillance by the authorities sowed the seeds for media closure. In addition, of the 10,780 people involved in Afghan newsrooms (8,290 men and 2,490 women) at the beginning of August 2021, only 4,360 remained in their position (3,950 men and 410 women) as of December 2022. Women journalists have, in fact, been disproportionately affected with nearly 84 percent of them having lost their jobs since the Taliban's comeback.⁵⁵ The remaining 16 percent of female media workers continue to face growing challenges—up till today— including enforced hijab and full-face veils for female news anchors.

Apart from that, private contact and communication have also been restricted. People cannot engage in 'private discussion without risking offline and online surveillance.⁵⁶ Criticism of the regime, or its moral codes of conduct, as well as sympathetic states towards the NRF and human rights abuses committed by the Taliban, are breeding grounds for arrest, physical punishment, and enforced

disappearance. The regime's armed men conduct daily mobile phone searches on the streets, looking for social media comments and pictures criticising the regime, as well as relying on individuals to inform them of neighbours' activities.⁵⁷ Also, the Taliban has ordered the removal of Persian/Dari signs and terminologies from all public institutions and replaced them with their Pashtu equivalents⁵⁸. Persian or Dari is a language spoken by the vast majority of people in Afghanistan.

As a predominately Pashtun movement, the Taliban speaks the Pashtu language and has historical discrimination towards other Afghan dialects and languages, especially Persian/Dari, struggling to wash it away from official and public posters and banners. Throughout much of Afghan history, language-driven disputes have largely contributed to inter-ethnic conflicts among various groups.⁵⁹ With the Taliban now in power, this dispute is steadily on the rise, widening ethnic and language divisions.

Freedom of Peaceful Assembly and Association

Since 2021, the right to freedom of peaceful assembly has also regressed significantly in Afghanistan. Shortly after the Taliban's takeover, several sporadic peaceful protests—calling for justice and equality—often led by women, took place in Kabul and other provinces.⁶⁰ However, the Taliban clamped down on these protesters, using excessive force, including live ammunition, whips, batons, kicks, pepper spray, and tear gas to disperse them as well as conducted house raids to arrest them, thereby stoking fears of reprisals among people.⁶¹

52 Reporters Without Borders, “#FreeMortaza -Support Committee Created for Jailed French-Afghan Journalist Mortaza Behnoudi,” February 10, 2023, <https://bit.ly/3K3IVE8>.

53 Reporters Without Borders (RSF), “Act Quickly to Protect Afghan Journalists, RSF Tells New UN Special Rapporteur,” May 11, 2022, <https://bit.ly/3y4I2V1>.

54 Freedom House, “Freedom in the World 2022: Afghanistan,” 2022, <https://bit.ly/3LShomX>.

55 Reporters Without Borders (RSF), “Afghanistan,” 2022, <https://bit.ly/3CeqaIF>.

56 Freedom House, “Freedom in the World 2022: Afghanistan,” 2022, <https://bit.ly/3LShomX>.

57 Ibid.

58 Azhand, F., “Taliban's Linguistic Apartheid Approach towards Persian in Afghanistan,” September 24, 2022, <https://bit.ly/3dUdY6D>.

59 Bezhan, F., “Dari or Farsi? Afghanistan's Long-Simmering Language Dispute,” *Radio Free Europe*, November 7, 2017, <https://bit.ly/3XxIe7U>.

60 Human Rights Watch, “Afghanistan: Women Protesters Detail Taliban Abuse,” October 20, 2022, <https://bit.ly/317yAUa>.

61 United Nations Human Rights Office of the High Commissioner, “Afghanistan: UN Experts Warns Human Rights Crisis Presages Authoritarianism,” September 12, 2022, <https://bit.ly/3feQKbD>.

Meanwhile, there are credible accounts of the abduction of the protesters by the authorities, mainly as a result of house raid.⁶² Those abducted have faced horrible ill-treatment, including torture and incommunicado detention. Journalists providing coverage of women's protests have faced the equal fate of intimidation, torture, and incommunicado detention.⁶³ To ban peaceful protests, on September 9, 2021, the Taliban authorities declared a directive prohibiting unauthorised public gatherings and protests with a further warning of punishment for any non-compliance.⁶⁴ The restriction forced many women protesters to hold live-streaming small-scale indoor demonstrations.

In addition to the repression of HRDs and journalists, the Taliban's comeback also forced many CSOs to suspend their operations and those few remaining in the country face growing operational and economic challenges. A UN report stated that, as of August 2022, more than 77 percent of women-led CSOs have been shut down since August 2021.⁶⁵

Most CSOs sought to evacuate their local staff outside Afghanistan due to fears of reprisals by the Taliban. However, some NGOs and agencies providing economic and humanitarian assistance are still operating in the country. As acute food insecurity threatens more than 19 million people—nearly half of the population⁶⁶—the authorities are seeking to share the burden of the economic crisis with NGOs delivering aid. Nevertheless, due to the lack of adequate protection mechanisms, NGO staff, too, face continued harassment by the Taliban who interferes unduly in the distribution of aid.

Taliban's Repressive Laws and Directives

Taliban authorities disbanded critical oversight mechanisms and democratic institutions, as well as a plethora of much-needed laws and policies. The dissolution of the Ministry of Women Affairs (MoWA) and its provincial directorates, both houses of Parliament, Afghanistan's Independent Human Rights Commission (AIHRC), and the Electoral Commission, are among institutionally democratic backslides.

The MoWA has been replaced with the Taliban's notorious MVV, which was previously in charge of dictating strict Sharia law in the 1990s.⁶⁷ Since its reinstallation, the MVV has introduced several restrictive guidelines, especially on women's movement and dress, a ban on girls' education above grade six, music and artistic activities, as well as shaving beards for men.

Likewise, the Taliban authorities have brought significant reshuffles across other national and sub-national institutions, mainly in the Ministry of Culture and Information (MoCI), and justice and security sectors. Instead of encouraging and presenting the country's long-standing cultural diversities, the MoCI has now turned into an institutional tool, dictating content restrictions on the media sector, imposing an all-covering burqa or hijab on female news anchors, and gender segregation in educational institutions.⁶⁸

Similarly, the security sector under the Taliban has transformed into a means of repression against anyone who raises their voice or challenges the status quo.

62 Kumar, R., & Noori H., "Taliban Launch Raids on Homes of Afghan Women's Rights Activists," *The Guardian*, January 20, 2022, <https://www.theguardian.com/global-development/2022/jan/20/taliban-arrest-afghan-womens-rights-activist-witness-says>

63 Shamdassani, R., (Spokesperson for the UN High Commissioner for Human Rights), "Press Briefing Notes on Afghanistan," *United Nations Human Rights Office of the High Commissioner*, February 1, 2022, <https://bit.ly/3rdMqw0>.

64 Speare-Cole, R., "Afghanistan: Taliban Bans All Protests Where Prior Permission Has Not Been Granted," *Sky News*, September 10, 2021, <https://bit.ly/3dOpbWe>.

65 UN Women, "Women's Rights in Afghanistan One Year After the Taliban Takeover," August 15, 2022, <https://bit.ly/3I0nGPZ>.

66 World Food Program, "Afghanistan: Situation Report May 20, 2022," May 23, 2022, <https://bit.ly/3V1TidI>.

67 BBC News, "Afghanistan: Taliban Morality Police Replace Women's Ministry," September 17, 2021, <https://bbc.in/3M3lglg>.

68 Aljazeera, "Taliban Enforces Order for Afghan Women TV Anchors to Cover Faces," May 22, 2022, <https://bit.ly/3StDJKb>.

For instance, the sweeping powers conferred to the Intelligence Directorate Agency have further eroded the remaining bits of the civic space by categorically attacking HRDs and media workers.⁶⁹

While the justice system was struggling with endemic corruption during the fallen government, it has been greatly undermined by the Taliban, making access to justice to the victims nearly impossible. Former judges and women are excluded from the Taliban's justice sector and are now under direct retaliatory attacks both from the Taliban and released prisoners who had been once brought to justice for human rights abuses. The Taliban have installed their fighters in the justice sector who have preliminary religious know-how or no legal experience at all.

Previously several enacted codified laws and defined roles and policies existed to adjudicate disputes, but under the current regime, there is serious uncertainty about the applicability of these laws.⁷⁰ For the most part, the Taliban's de facto authorities view these laws and policies as being against their interpretation of Sharia Islamic jurisprudence. To navigate the compliance of the existing laws and regulations with Sharia law, the Taliban authorities have said to form a commission under the Ministry of Justice; however, they have yet to provide any information about the outcome of the review, nor have they detected any contradictions with Sharia law.⁷¹

Besides this, other credible laws and pieces of legislation that have been suspended by the Taliban include the 2004 Afghan Constitution, Electoral Law, Political Parties' Law, and Gathering and Assembly Law. On September 28, 2021, the authorities

announced that parts of the half-century-old Monarchy Constitution of the 1960s that do not contravene the regime's interpreted Sharia law will be abolished.⁷² With this announcement, the regime intended to portray a more reformed version of its approach to governing Afghanistan. Nevertheless, the Taliban has not yet invoked its approach of governance to the 1960s monarchy bill, nor has the regime introduced a codified bill of rights to function as the country's national constitution. Thus, the lack of a codified bill of rights has largely led to public confusion. It is partly because of various understandings of Islamic Sharia law among different branches of Islamic and Muslim scholars.

The Taliban's decision caused a full-blown rule of law crisis in Afghanistan and without a moderate legal system, the country will not be able to sustain itself in isolation. It, therefore, requires a nationally agreed-upon legal system, including a codified constitution as well as upholding its obligations emanating from international human rights documents and humanitarian treaties to which Afghanistan is a state party.

The Taliban leaders have not yet made any open pronouncement on whether they uphold these obligations. On July 28, 2022, the regime's supreme leader, Hibatullah Akhundzada, in an off-camera appearance, urged his governors to execute Sharia law and put aside human-made law, and mentioned, 'God's orders are implemented in the Taliban government and that man-made laws are not based on the will of the people.'⁷³ Hibatullah has, however, never actually appeared on camera and his followers have heard only his recorded voices. Many observers believe that Hibatullah is dead and someone else plays his role.

69 Rahmani, W., & Butler, S., Committee to Protect Journalists, "Afghanistan's Intelligence Agency Emerges as New Threat to Independent Media," March 2, 2022, <https://shorturl.at/EKRT5>

70 United Nations Human Rights Office of the High Commissioner, "Afghanistan: UN Experts Warns Human Rights Crisis Presages Authoritarianism," September 12, 2022, <https://bit.ly/3feQKbD>.

71 United Nations Human Rights Office of the High Commissioner, "Afghanistan: UN Experts Warns Human Rights Crisis Presages Authoritarianism," September 12, 2022, <https://bit.ly/3feQKbD>.

72 Yasa, A., R., "Human Rights Situation in Afghanistan: 4 Reasons Why the Taliban Should Not Be Recognized," *The Pacific Council Magazine*, October 19, 2021, <https://bit.ly/3UTuGnl>

73 BBC, "Taliban Leader: Apply Sharia Law, Not Man-made Rules (Persian)," July 28, 2022, <https://bbc.in/3PY0KUi>

Smearing Tactics and Disinformation

To silence civilians and repress their opponents, the Taliban regime continuously resorts to smearing tactics and disinformation, mainly against women and minority groups. In a geographical context like Afghanistan, the use of a smear campaign to damage the reputation and credibility of a person, especially a woman's, has severe social consequences both for the victim and his or her family alike. Contradictory views and topics to Islamic values have thus become highly sensitive and risky with the Taliban Islamists now ruling the country. For instance, on September 1, 2022, Elaha, a female student of Kabul Medical University and daughter of a former member of the Afghan security force, appeared on social media, claiming to have been raped by Qari Saeed Khosty, a former Interior Ministry Spokesperson of the Taliban.

In the video, she described the horrible abuses, including months of torture and rape by Khosty. But labeling rape and torture as marriage, Khosty later reacted, "I noticed Elaha had a faith problem in Islam, and I tried to correct her through advice and discussion. But it did not work, and she clearly insulted the sacred and Holy Quran and I divorced

her.⁷⁴ According to reports, Elaha moved to Pakistan after the incident; however, the Taliban have, through their networks inside Pakistan, arrested her again. Elaha is now in the Taliban's custody without further information about her exact whereabouts⁷⁵. Inferring from this example, it is safe to say that the smearing tactic provides more space for the Taliban to silence the victims and justify its own women's rights abuses.

Hand in hand with the smearing tactic, the use of disinformation is another way of removing opponents across the country. With the Taliban back in power, Islamic State of Khurasan Province (IS-KP) affiliates, too, intensified insurgency far beyond their initial strongholds in eastern Nangarhar province.⁷⁶ Meanwhile, the Taliban fighters engaged in a large-scale reprisal against former security forces and individuals linked to the NRF. Most observers believe that the authorities conducted a military campaign against former members of ANDSF and NRF under the name of IS-KP, mainly in the north of Kabul and other northern provinces.⁷⁷ This helps the regime not only to project themselves as capable power holders fighting against IS-KP, but also to advance their retaliatory activities and wipe out their opponents.

74 Mukhtar, A., "Woman Claims Months of Rape and Beatings at Hands of Ex-Taliban Official She Was Forced to Marry," *CBS News*, September 1, 2022, <https://cbsn.ws/3fG16BK>.

75 Aamaj News, "Elaha's Family Request from UNAMA: Save Elaha from Taliban's Torture (Persian)," January 2, 2023, <https://bit.ly/3XxReST>.

76 ALAIN, "Taliban Kill Former members of Afghan Security Forces under the Name of ISKP," November 6, 2021, <https://bit.ly/3YLQwLb>.

77 Ibid.

Conclusion and Recommendations

To conclude, two critical incidents: the outbreak of COVID-19 and the subsequent collapse of the Afghan republic inflicted unbearable socio-economic and political challenges to Afghanistan. The pandemic in early 2020, gripped Afghanistan when the country was engulfed in an unprecedented armed conflict with the Taliban and political instability. Several months of lockdown and border closures due to the pandemic deepened poverty, widened inequality, and undermined public access to basic services including health. Everyone, mainly low-income families, suffered the most from the pandemic's ramifications. Although the fallen Afghan government introduced several relief programmes, including free bread distribution and cash payment to poor families, the process was hugely undermined by flawed management and corruption.

Additionally, gender-based violence increased significantly across the country in which women and girls have been the primary victims. Those women who were working before lost their income during the pandemic and became dependent financially on male family members such as fathers, and brothers. The financial dependency put them at further risk of violence. Also, men in low-income households became violent in their behavior, suffering from increased economic stress and anxiety caused by the pandemic. Many organisations, including NGOs and other formal human rights mechanisms supporting human rights and especially addressing cases of abuse against women, remained largely closed or reduced their working hours. As a result, this undermined women's access to justice.

While the Afghan community was still living in COVID-driven anxiety, the collapse of the Afghan republic and the Taliban's forceful takeover of power was a dark, new chapter in Afghanistan's turbulent history. And even though, at first, there was a glimpse of hope that the new authorities would—more or less—maintain some of the progress that the country had achieved in terms of gender equality over the past two decades; the Taliban—has after all—not changed a bit. To put it simply, the regime is still ideologically radical, politically exclusionist, and practically brutal. As a result, its actions have rapidly and widely undone the progress of the past twenty years.

The suspension of key human rights and oversight mechanisms and laws and their replacement with draconian guidelines and policies are strong signs of a reversal to a dark era. Additionally, effective restrictions on women's and girls' rights, including their work and education, repression of freedom of expression and peaceful assembly and media, along with the deliberate and widespread killing of minorities, HRDs, ANDSF, and other opponents are a clear indication of Afghanistan descending into totalitarianism. Therefore, the de facto authorities must be judged by their deeds and not their words.

The Taliban must form a broadly inclusive representative system, respect women's and girls' rights, end deliberate killings and human rights abuses, respect Afghanistan's diversities and differences of opinions, and address the current economic crisis.

This is mainly because, with the current repressive approach, Afghanistan would sooner or later be caught in another civil war. This can be avoided with the help of the following measures:

To the International Community and the UN Agencies:

- (i) Urge the Taliban to reverse all discriminatory policies and guidelines that restrict the fundamental rights of women and girls, including their right to work, education, and movement, as well as ensure the right to freedom of expression, and peaceful assembly.
- (ii) Exert pressure on the Taliban leaders to form a broadly inclusive system in which everyone, including women and minority groups, are well-represented.
- (iii) Reinstating the travel ban on the Taliban leaders' movement out of Afghanistan in response to their continued and deliberate targeted killings, other human rights violations, and subsequent disregard for Afghanistan's international human rights obligations.
- (iv) Extending and expanding the current mandate of the UN Special Rapporteur on the human rights situation in Afghanistan both in size and scope to respond to the magnitude of the problems on the ground. This should also include establishing a comprehensive oversight mechanism with clear follow-up processes to hold the de facto authorities accountable for their abusive actions.
- (v) Increase support to HRDs, human rights activists and their families trapped inside Afghanistan by providing them with unbureaucratic humanitarian visas. Especially for Afghan diaspora HRDs who advocate for human rights from abroad, but their family members are still stranded within the country.
- (vi) Increase technical, capacity-building, and financial support to the Afghan diaspora HRDs committed to continuing their advocacy efforts for a prosperous and vibrant Afghanistan.
- (vii) Ensure adequate political, and financial support to HRDs and human rights activists, especially women activists, journalists, and protesters advocating inside Afghanistan.
- (viii) Provide adequate oversight on humanitarian aid distribution across Afghanistan to ensure that families in need, especially minority groups have access without discrimination.
- (ix) The UN agencies, mainly UNAMA should effectively engage with civil society organisations and provide them with political support as well as ensure better coordination across the different UN systems operating in Afghanistan.
- (x) Donor communities should restore their financial support to civil society organisations and independent media outlets to ensure their active operational continuity.

South Asia, comprising of eight countries —Afghanistan, Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan and Sri Lanka, is a highly populated region. There are about one-and-a-half billion people representing a wide range of ethnicities, cultures, and religions. While it does not account as one of the three main economic core areas of the world, over the recent years, the region—with the exception of Afghanistan—has increasingly been emerging to compete in with other economies with goods, services and labour are extensively traded.

However, despite these socio-economic progressions, it is important to note that South Asia's relationship with democratic governance has remained extremely complicated. The region has historically been beset by political instability. This can be predominantly due to its prolonged colonial period and the subsequent process of decolonisation. This was then compounded by rising regional insecurities, boundary and territorial disputes and armed conflict along ethnic, religious, ideological and linguistic lines, resulting in widespread violations of civil, political, economic, social, and cultural rights, and by State and non-State actors.

Following the end of the colonial period, several South Asian countries such as Sri Lanka, Bangladesh, and Pakistan continue to experience tides of ethno-nationalism with the military paving an increasing role in civilian governance. Widespread democratisation through the 1980s and 1990s did shift the complexion of the region away from its undemocratic past, thereby, ushering rising hopes of a democratic wave.⁷⁸ As a result, constitutional and legislative protection of human rights and fundamental freedoms were acknowledged by the concerned governments with efforts being made to ensure basic improvements in civic spaces.

78 Lindsey W. Ford and Ryan Hass, "Democracy in Asia," *Brookings*, January 22, 2021, <https://www.brookings.edu/articles/democracy-in-asia/>

BANGLADESH: TARGETED USE OF REPRESSIVE LAWS AGAINST HUMAN RIGHTS DEFENDERS AND JOURNALISTS REPORTING ON GOVERNMENT'S MISHANDLING OF COVID-19

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1. Introduction

Bangladesh, with a population of approximately 170 million, ranks 95th in the global health security index out of 195 countries and scored 35.5 in 2021¹. The governmental response to those who seek health care support in emergency situations, like the COVID-19 pandemic, fell far short of meeting the expectations of citizens who urgently needed medical care after being infected with the virus.

Bangladesh ranked 84th out of 113 countries consecutively during the years 2020² and 2021³, in

the Global Food Security Index (GFSI) published by the Economist. All other neighboring countries of South Asia were way ahead of Bangladesh in that ranking⁴ during, and prior to, the pandemic period⁵ as per the GFSI. In 2019, Bangladesh's poverty data, according to the Asian Development Bank (ADB), showed that 20.5 per cent of the population lived below the national poverty line⁶.

In 2021, the proportion of the employed population living below the US\$1.90 Purchasing Power Parity per day threshold was 4.0 percent⁷. The Bangladesh government contrarily, kept claiming to be a booming

1 Global Health Security Index, 2021, <<https://www.ghsindex.org/wp-content/uploads/2019/08/Bangladesh-1.pdf>>

2 The Economist "2020 Global Food Security Impact", January 21, 2020, <https://impact.economist.com/sustainability/project/food-security-index/resources/Global_Report_GFSI_2020_Final_21_Jan_2021.pdf>

3 Ibid 2021 <https://impact.economist.com/sustainability/project/food-security-index/resources/Economist_Impact_GFSI_2021_Global_Report_Oct_2021.pdf>

4 Ali, A., "Bangladesh last in South Asia According to Global Food Security Index 2020", The Daily Star, February 27, 2021, <<https://www.thedailystar.net/bangladesh/news/bangladesh-last-south-asia-according-global-food-security-index-2020-2052065>>

5 Ali, M., "Global Food Security Index: Bangladesh Lowest in South Asia", The Business Standard, December 9, 2019, <<https://www.tbsnews.net/bangladesh/global-food-security-index-bangladesh-lowest-south-asia>>

6 Asian Development Bank, "Poverty Data: Bangladesh", Accessed June 24, 2023, <<https://www.adb.org/countries/bangladesh/poverty>>

7 Ibid

economy with a high rate of economic growth⁸. Unjustified actions of the government pushed an estimated 32 million people into poverty in 2021⁹. A survey jointly conducted by the BRAC Institute of Governance and Development (BIGD) and Power and Participation Research Centre (PPRC) revealed in its report that 'Rural and urban slum households who were vulnerable before COVID-19 remain the most affected population group.'¹⁰

The rhetoric about the positive impact of the economic growth, matching the governmental narratives and statistics, did not universally reflect in the living standards of the ordinary people of the country¹¹. Rather, the lives of people in Bangladesh became more and more challenging day by day due to increasing prices of essential commodities and shrinking purchasing power¹². The living costs in the country's capital city—Dhaka— already increased by 6.8 per cent in 2020¹³. Consequently, individuals from low-income backgrounds who resided in Dhaka began leaving, as they were unable to sustain themselves amidst the loss of income due to government-imposed lockdowns, which were implemented without providing any incentives to the citizens¹⁴.

According to the Global State of Democracy Report 2021, published by the International Institute for Democracy and Electoral Assistance (IDEA) of Sweden, Bangladesh was classified as a continued authoritarian State since 2014¹⁵. Categorising any score below 0.40 as low, the report stated that Bangladesh scored 0.35 on the Representative Government indicators.¹⁶.

The pattern of stifling the freedoms of peaceful assembly, association, and expression during the pre-pandemic years was already alarming in Bangladesh. Prior to the 2018 national parliamentary elections, the government adopted the Digital Security Act (DSA)-2018, which is used to curb free expression, especially in the digital sphere and to target journalists, bloggers, and dissenters¹⁷. The draconian nature of the DSA had its impact on the freedom of press during the elections¹⁸. Eight independent human rights experts of the United Nations were alarmed by the pre-election violence with impunity¹⁹. The media did not substantively publish reports on overnight ballot stuffing²⁰ that the ruling party activists were allowed to commit in collaboration with the Election Commission (EC) and the law-enforcement agencies of Bangladesh

- 8 Byron, R. K. & Rahman M. F., "Bangladesh to Post Highest GDP Growth in Asia This Fiscal Year", The Daily Star, June 19, 2020, <<https://www.thedailystar.net/business/news/bangladesh-post-highest-gdp-growth-asia-fiscal-year-1917049>>
- 9 Islam, A., "COVID in Bangladesh: Millions Plunged Into Poverty", Deutsche Welle, November 16, 2021, <<https://www.dw.com/en/covid-in-bangladesh-how-have-lockdowns-plunged-millions-into-poverty/a-59835993>>
- 10 Ibid
- 11 UBINIG - Policy Research for Development Alternative, "Jibon or Jibika: The Struggle for Life and Livelihood Amid Pandemic", November 30, 2020, <[https://ubinig.org/index.php/home/showArticle/233/english/UBINIG-\(Policy-Research-for-Development-Alternative\)/Jibon-or-Jibika:-The-struggle-for-life-and-livelihood-amid-pandemic](https://ubinig.org/index.php/home/showArticle/233/english/UBINIG-(Policy-Research-for-Development-Alternative)/Jibon-or-Jibika:-The-struggle-for-life-and-livelihood-amid-pandemic)>
- 12 Jahid, A. M., "High Prices of Essentials: Double Blow for Those with Fixed Income", The Daily Star, October 5, 2021, <<https://www.thedailystar.net/news/bangladesh/news/high-prices-essentials-double-blow-those-fixed-income-2190746>>
- 13 The Daily Star, "Living Cost in Dhaka Increased by 6.8% in 2020: CAB", June 16, 2021, <<https://www.thedailystar.net/business/news/living-cost-dhaka-increased-68-2020-cab-2112089>>
- 14 Ali, S. & Amin, N., "Low-Income People Leaving Dhaka", The Business Standard, June 23, 2020, <<https://www.tbsnews.net/coronavirus-chronicle/covid-19-bangladesh/low-income-people-leaving-dhaka-96850>>
- 15 International Institute for Democracy and Electoral Assistance, "The Global State of Democracy Indices- Bangladesh", Accessed June 26, 2023, <<https://www.idea.int/gsod-indices/countries-regions-profile?rsc=%5B771%5D&covid19=1>>
- 16 The New Age, "Authoritarian Rule Continues in Bangladesh Since '14: IDEA", November 24, 2021, <<https://www.newagebd.net/article/155609/authoritarian-rule-countinues-in-bangladesh-since-14-idea>>
- 17 The Financial Express, "Mending the Digital Security Act", March 11, 2021, <<https://thefinancialexpress.com.bd/views/columns/mending-the-digital-security-act-1615386480>>
- 18 CIVICUS, "Repressive Laws and Tactics Used to Silence Critics as Bangladesh Elected to UN Human Rights Body", October 26, 2018, <<https://monitor.civicus.org/explore/repressive-laws-and-tactics-used-silence-critics-bangladesh-elected-un-human-rights-body/>>
- 19 Office of the High Commissioner for Human Rights, "Bangladesh: UN Human Rights Experts Alarmed by Violence Ahead of Election" December 20, 2018, <<https://www.ohchr.org/en/press-releases/2018/12/bangladesh-un-human-rights-experts-alarmed-violence-ahead-election>>
- 20 Prothom Alo English, "Kamal Says Ballot Boxes Stuffed Overnight", December 30, 2018, <<https://en.prothomalo.com/bangladesh/Kamal-casts-ballot-at-Viqarunnisa-centre>>

on the night of 29 December 2018²¹. A large number of opposition activists became victims of enforced disappearances, which is one of the brutal tools employed to silence dissidents²².

In pursuit of renewing the State's power, the regime also committed the highest number of extrajudicial killings in one calendar year in 2018 as rights groups documented²³. A Human Rights Watch (HRW) research from October to December 2018 'found repeated instances of arbitrary arrest by security forces and detention of protesters and political opposition figures, and acts of violence and intimidation by members of the ruling party's student and youth wings.²⁴ The HRW observed that 'the crackdown, and the broad and vaguely worded laws that facilitate it, are contributing to an environment of fear.

Institutions including the judiciary and the national election commission do not appear to be fully prepared to independently and fairly resolve disputes around campaigns and elections, such as on registration, candidacies, and results.' Human rights groups including Odhikar, a leading human rights organisation of Bangladesh, were refused permission by the Election Commission (EC) to conduct election monitoring. Independent journalists and media outlets are under pressure to self-censor²⁵. And for the subsequent years, the authoritarian actions undertaken by the Bangladesh

government continued to prove the above index scores.

This became particularly evident during the COVID-19 pandemic, where for instance, arbitrary detentions of the dissidents increased manifold. People of various professional backgrounds including writers, cartoonists, journalists, teachers, lawyers, incoming migrant workers, human rights defenders, and trade union activists were arbitrarily detained, and held with trumped up charges for criticising the government's mishandling of the pandemic owing to the prevailing corruption and anti-people policies²⁶.

The continued struggles of Bangladeshis for fundamental freedoms, especially the freedom of peaceful assembly and association, freedom of expression and opinion, and the freedom of press were extensively curtailed during the pandemic. The massive abuse of power and draconian laws against the people severely impacted the life, livelihood, and civil liberties of people. The European Union, in its 2021 Annual Human Rights and Democracy report said that the human rights situation in Bangladesh continued to give rise to concerns regarding shrinking space for civil and political rights²⁷.

The country's culture of impunity is entrenched for gross human rights violations throughout the

21 Prothom Alo English, "So Ballot Boxes Are Stuffed the Night Before Polls?" March 9, 2019, <<https://en.prothomalo.com/bangladesh/So-ballot-boxes-are-stuffed-the-night-before>>

22 FIDH – International Federation of Human Rights, "Vanished Without a Trace: The Enforced Disappearance of Opposition and Dissent in Bangladesh", April 2019, <https://www.fidh.org/IMG/pdf/bangladesh735a_web.pdf>

23 The Daily Star, "Rights Situation in 2018: 'Extremely Alarming'", January 11, 2019, <<https://www.thedailystar.net/country/highest-ever-extrajudicial-killings-in-bangladesh-in-2018-ask-1685563>>

24 Human Rights Watch, "Bangladesh: Crackdown as Elections Loom Allegations of Partisan Election Commission", December 13, 2018, <<https://www.hrw.org/news/2018/12/13/bangladesh-crackdown-elections-loom>>

25 Human Rights Watch, "Creating Panic" Bangladesh Election Crackdown on Political Opponents and Critics", December 22, 2018, <<https://www.hrw.org/report/2018/12/22/creating-panic/bangladesh-election-crackdown-political-opponents-and-critics>>

26 CIVICUS, "Bangladesh: Stifling Expression Using Digital Security Act Must Not Be the Norm to Address COVID-19 Pandemic", May 11, 2020, <<https://www.civicus.org/index.php/media-resources/news/4413-bangladesh-stifling-expression-using-digital-security-act-must-not-be-the-norm-to-address-covid-19-pandemic>>

27 European External Action Service, 19 April 2022, 2021 EU Annual Human Rights and Democracy Country Report, Page 182, <<https://www.eeas.europa.eu/sites/default/files/documents/2021%20Annual%20Report%20on%20Human%20Rights%20and%20Democracy%20in%20the%20World%20-%20Report%20by%20the%20European%20Union%20High%20Representative...pdf>>

decades²⁸, and became worse during the pandemic. Bangladesh ranked 124th out of 139 countries in the Global Rule of Law Index by the World Justice Project (WJP) in 2021²⁹. According to the WJP report's 'specific breakdown of the factors, depicts that Bangladesh ranks the worst in South Asia (6th) in two areas: constraints on government power, and fundamental rights.³⁰

It also reportedly warned that, 'The current case backlog in our courts is a daunting concern, which, if not tackled now, may lead to severe consequences in the future.³¹' Bangladesh ranked 11th, according to the Committee to Protect Journalists' Global Impunity Index 2021, on journalists killing³².

In the civic space ranking in 2021, Bangladesh remained a 'repressed' country, according to CIVICUS Monitor³³. Bangladesh also ranked the lowest in COVID-19 testing facilities in South Asia, according to the World Health Organisation³⁴. The government used the COVID-19 pandemic as an excuse to restrict the freedom of peaceful assembly and association of the dissidents and the political opposition³⁵. Despite the opposition's boycott, the government staged elections³⁶ of the local governmental bodies and parliamentary by-

elections between March and July 2020, during the peak of the pandemic³⁷.

In contrast, even after a year since the pandemic, the government denied the right to hold political rallies and used lethal force against protesters with the excuse of COVID-19³⁸. Critics, journalists and whistleblowers became the targets of the government in its efforts to silence the discussions on irregularities and embezzlements that were seriously affecting the quality of healthcare³⁹. The authorities arrested journalists and critics as well as pressured academics to disown their research on the pandemic management⁴⁰.

By early May 2020 - within two months since the government acknowledged the outbreak of COVID-19 in Bangladesh - the authorities arrested eight journalists or cases under the DSA⁴¹. Over 100 people who expressed their opinions in social media criticising the government, its ministers, and lawmakers for their mismanagements in COVID-19 preparedness and response, were sued in over 60 cases registered in April and May 2020 under the DSA⁴².

28 FORUM-ASIA, "Impunity in South Asia - State of Impunity in Bangladesh", September 2021, <<https://www.forum-asia.org/uploads/wp/2021/10/South-Asia-Impunity-Report-Bangladesh.pdf>>

29 World Justice Project, "Bangladesh Overall Score 2021", October 28, 2021, <<https://worldjusticeproject.org/rule-of-law-index/country/2021/Bangladesh/>>

30 The Daily Star, "Bangladesh ranks 124th in World Justice Project's Rule of Law Index", October 28, 2021, <<https://www.thedailystar.net/law-our-rights/news/bangladesh-ranks-124th-world-justice-projects-rule-law-index-2208576>>

31 Ibid.

32 Dunham, J., "Killers of Journalists Still Get Away with Murder", Committee to Protect Journalists, October 28, 2021, <<https://cpj.org/reports/2021/10/killers-of-journalists-still-get-away-with-murder/>>

33 CIVICUS, Monitor Tracking Civic Space, "Bangladesh 2021", Accessed June 26, 2023, <<https://monitor.civicus.org/country/bangladesh/>>

34 The Business Standard, "Bangladesh Lowest in Covid-19 Testing in South Asia", May 28, 2020, <<https://www.tbsnews.net/coronavirus-chronicle/covid-19-bangladesh/bangladesh-lowest-covid-19-testing-south-asia-86248>>

35 Center for International Private Enterprise, "Bangladesh in the Shadow of COVID-19 — Carnival of Corruption, Controlling Information, and Coercion", August 12, 2020, <<https://www.cipe.org/resources/bangladesh-in-the-shadow-of-covid-19/>>

36 Shovon, F. R., "EC Slammed for Holding By-Elections Amid Covid-19 Pandemic", Dhaka Tribune, March 31, 2020, <https://archive.dhakatribune.com/bangladesh/election/2020/03/22/ec-slammed-for-holding-by-elections-amid-covid-19-pandemic>

37 Bangladesh Election Commission, "Elections During COVID-19 Pandemic in Bangladesh", July 14, 2020, <http://www.ecs.gov.bd/bec/public/files/1/Elections%20during%20pandemic-BEC_1_.pdf>

38 Amnesty International, "Bangladesh: Authorities Must Respect Right to Peaceful Protest Following Bloody Crackdowns", March 26, 2021, <https://www.amnesty.org/en/latest/press-release/2021/03/bangladesh-authorities-must-respect-right-to-peaceful-protest-following-bloody-crackdowns/>

39 Coalition for Human Rights in Development, "Unhealthy Silence", Page 20, March 19, 2020, <https://rightsinddevelopment.org/wp-content/uploads/2021/07/Unhealthy-silence_full-report.pdf>

40 CIVICUS, "Journalists In Bangladesh Face Criminalisation Amid the Pandemic While Critics Are Silenced", June 19, 2020, <https://monitor.civicus.org/explore/journalists-bangladesh-face-criminalisation-amid-pandemic-while-critics-are-silenced/>

41 Mahmud, I., "8 Journalists Held in Bangladesh in a Week Under Digital Security Act", New Age, May 8, 2020, <<https://www.newagebd.net/print/article/105935>>

42 Ibid.

The given context warranted a comprehensive investigation into the situation based on verifiable and credible information. This study specially focused on the abuse of draconian laws such as the Digital Security Act in curbing freedom of expression, and the sharing of opinions both online and offline, especially during pandemic. It looked into the tactics the authorities of Bangladesh deployed in obstructing the freedom of peaceful assembly and association, reprisals against the HRDs and during the pandemic.

2. Methodology

This research was conceptualised and initiated considering the increasing reports on repression of civil liberties that were coming to the fore in Bangladesh at the time of the COVID-19 pandemic. The research focused on the ground realities in relation to the situation of civic space in the country. It considered the findings of documentations published by international, regional, national entities including academic institutions, civil society organisations, human rights groups, and media publications. It assessed the verifiable publicly available documents. Additionally, much emphasis has been paid to objectively examine how the government had targeted the Human Rights Defenders (HRDs), Women Human Rights Defenders (WHRDs), journalists, and other activists, as well as ordinary dissidents while the alleged mishandling and mismanagement of COVID-19 by the government were taking place in Bangladesh.

The research looked into the patterns of exploiting restrictive instruments in curbing civic space during the COVID-19 pandemic in Bangladesh. It also focused on the available options for people's access to justice in the country's domestic justice institutions. The research necessitated communication tools that the research team and respondents trusted to be secure, in order to effectively reach out to victims of human rights violations, including HRDs, WHRDs, journalists, lawyers, academics, families of the victims, and

emergency assistance facilitators. And during the process of verifying the information through in-person and virtual encrypted communication, the respondents often declined to reveal their identities in public. Instead, they generally preferred anonymity suggesting the use of publicly available references in fear of their safety and reprisals.

The research report contains publicly accessible emblematic cases of curtailing the civic space in Bangladesh. The objective of the research report is to contribute to the process of widening the civic space including the right to free and fair elections, the right to freedom of peaceful assembly and association, freedom of press, freedom of expression and opinion, and the universal access to justice in a credible institutional system of accountability. This report may extend the avenues of international advocacy at the United Nations Human Rights mechanisms including its Special Procedures and Treaty Bodies to promote and protect human rights.

3. Overview of the Human Rights Situation in Bangladesh

» Overview of the Human Rights Situation in the Country Between 2020-2021 since the Onset of the Pandemic

Bangladesh's human rights situation was already catastrophic since Prime Minister Sheikh Hasina assumed office in January 2009. In order to continue the authoritarian exercise of power, successive parliamentary elections in January 2014 and in December 2018 were rigged under the Sheikh Hasina regime⁴³. Election years have become a hallmark of gross violations of human rights including enforced disappearances and extrajudicial killings.

In the lead up to the country's 11th parliamentary election scheduled on 30th December, 2018, the situation further deteriorated. BBC published video footage on election day morning that ballot stuffing was done on the previous night – before the commencement of voting in the country⁴⁴.

43 Kabir, K., "Imperative is a Change for the Better", New Age, December 16, 2022 <<https://www.newagebd.net/print/article/189213>>

44 BBC Bangladesh, "Parliament Election 2018: Ballot Boxes Stuffed Before Voting As Caught on Camera by BBC Correspondent in Chittagong", December 31, 2018, <<https://www.bbc.com/ws/av-embeds/cps/bengali/news-46720707/p06wtqtz/bn>>

Journalists witnessed that the police had aided ballot stuffing in several constituencies⁴⁵.

The documented number of enforced disappearances and extrajudicial killings during the pre-election months increased as compared to the years when elections do not take place⁴⁶. Tens of thousands of innocent people, including the activists and leaders of the mainstream opposition political parties were arbitrarily detained for prolonged terms in trumped-up cases⁴⁷. Systemic torture and ill-treatment in incommunicado detention and in police remand have overwhelming consequences in the psychosocial well-being of the victims⁴⁸.

The Rapid Action Battalion (RAB), and intelligence units such as the Directorate General of Forces Intelligence (DGFI) and National Security Intelligence (NSI), the Detective Branch (DB) of Police, Counter Terrorism and Transnational Crime Unit (CTTCU) of the Police, have been reported to have committed gross violations of human rights in Bangladesh. The criminal justice institutions, including all tiers of the judiciary, collaborate with the government and the ruling party to deny the right to fair trial and access to justice to the victims. Such denial of access to justice is done apparently for weakening the opposition and intimidating ordinary people at large. Governmental crackdowns continued against the dissidents, journalists, human rights defenders,

and political opponents in the post-election months in 2019.

Bangladesh's law-enforcement agencies committed 466 extrajudicial killings in 2018 and 399 in 2019⁴⁹, as per Odhikar's report. The government launched a 'war on drugs' which increased the extrajudicial killings in Bangladesh⁵⁰. In the year 2016, there were 178 victims of extrajudicial killings⁵¹ and in 2017, there were 155 extrajudicial killings committed by law-enforcement agencies⁵². The actual number of victims of extrajudicial killings is higher, as many victims were abducted from one jurisdiction, while bullet-riddled bodies were found in a different jurisdiction of the country. Consequently, their families were unable to determine the identity of the individual victims⁵³.

However, in the lead up to the national parliamentary elections, the trend of arbitrary detention spiked further with the government's harsh crackdown for constantly silencing the dissidents and weakening the political opposition in Bangladesh. The prison population in the country in 2016 was 73,177, which jumped up to 83,350 in 2018, the year when the national parliamentary election was scheduled for⁵⁴. And amongst this total number of prison population, 75.6 per cent were pre-trial or remand detainees⁵⁵.

45 The Daily Star, "Police-Aided Ballot Stuffing", December 31, 2018, <<https://www.thedailystar.net/bangladesh-national-election-2018/police-aided-ballot-boxes-stuffing-bangladesh-election-2018-1681033>>

46 The Daily Star, "Rights Situation in 2018: 'Extremely Alarming'", January 11, 2019, <<https://www.thedailystar.net/country/highest-ever-extrajudicial-killings-in-bangladesh-in-2018-ask-1685563>>

47 Hussain, M., "Bangladesh Police Accused of Harassment With Fake Cases", Voice of America, March 13, 2019, <<https://www.voanews.com/a/bangladesh-police-accused-of-harassment-with-fake-cases/4827043.html>>

48 Prothom Alo English, "When will the fake cases end?", February 20, 2019, <<https://en.prothomalo.com/bangladesh/When-will-the-fake-cases-end>>

49 Odhikar, "Annual Human Rights Situation Report-2018", Page 9, August 8, 2018, <https://odhikar.org/wp-content/uploads/2019/08/Annual-HR-Report-2018_Engl.pdf>

50 Amnesty International, "Bangladesh: Alleged Extrajudicial Killings in the Guise of a 'war on drugs'", November 4, 2019, <<https://www.amnesty.org/en/latest/press-release/2019/11/bangladesh-killed-in-crossfire/>>

51 Odhikar, "Annual Human Rights Situation Report-2016", Page 6, January 2016, <https://odhikar.org/wp-content/uploads/2017/01/AHRR-2016_Eng.pdf>

52 Odhikar "Annual Human Rights Situation Report-2017", Page 11, January 2017, <https://odhikar.org/wp-content/uploads/2018/01/Annual-HR-Report-2017_English.pdf>

53 Prothom Alo English, "85 Families of Lost Ones Cry for Justice", April 22, 2018, <<https://en.prothomalo.com/bangladesh/84-families-of-lost-ones-cry-for-justice>>

54 World Prison Brief, "World Prison Brief Data on Bangladesh", Accessed December 18, 2022, <<https://www.prisonstudies.org/country/bangladesh>>

55 Ibid.

Bangladesh is reportedly among the top 3 countries of the world with the highest proportion of pre-trial or remand detainees after war-torn Libya, and San Marino⁵⁶. The country's prisons are often overpopulated with twice their capacities. On 25 November 2022, there were 81,156 inmates against the capacity of 42,626 in the country's 68 jails, according to report citing the Department of Prisons⁵⁷.

During the COVID-19 pandemic, there were 83,981 inmates in the 68 jails as of July 1, 2020, against the capacity of 41,314, according to the Directorate of Prisons⁵⁸. The legal experts pointed fingers to the existence of stringent laws, such as the Digital Security Act having low rates of bail provisions, as one of the reasons behind the overcrowded prison condition⁵⁹. The high number and proportion of pre-trial detention in prisons, apart from undisclosed secret detention facilities where incommunicado detainees are held for indefinite periods, indicates the trend of disregarding the right to liberty of the people⁶⁰.

Given this already unfortunate state of affairs vis-à-vis human rights in Bangladesh, the situation turned out to be even more alarming with the onset of the COVID-19 pandemic. Bangladesh's healthcare system utterly failed not only to accommodate the

COVID-19 patients, it was also unable to protect their staff as the outbreak spread across the country due to corruption and unpreparedness. Bangladesh witnessed the deaths of 36 doctors, and infection of over 1200 caregivers within the first two months since the COVID-19 was officially reported⁶¹.

As this situation became public through discourse on mainstream media as well as social media, the government began clamping down on the dissidents for posts in social media⁶². Arbitrary arrests and detentions under the DSA kept rising as the government became highly intolerant of social media criticism for its discriminatory policies to treat the COVID-19 patients⁶³. Increased trend of arbitrary detention under draconian laws had seriously damaging impact on the freedom of expression and opinion.

The Bangladesh government had imposed lockdowns on several occasions in March 2020, banning public gatherings and suspending public transportations across the country⁶⁴. Without ensuring any direct and emergency incentives for the low-income population, their livelihood and financial survival became extremely hard.⁶⁵

Imposing lockdowns and bans on public and social gathering with the excuse of controlling COVID-19

56 Ahmad, R., "What is Causing Prison Overcrowding in Bangladesh?", Dhaka Tribune, April 9, 2021, <<https://archive.dhakatribune.com/bangladesh/2021/04/09/what-is-causing-prison-overcrowding-in-bangladesh>>

57 Moneruzzaman, M., "Inmates Live Subhuman Life in Overcrowded Jails Across Bangladesh", New Age, November 28, 2022, <<https://www.newagebd.net/article/187750/inmates-live-subhuman-life-in-overcrowded-jails-across-bangladesh>>

58 Ibid.

59 Ahmad, R., "What is Causing Prison Overcrowding in Bangladesh?", Dhaka Tribune, April 9, 2021, <<https://archive.dhakatribune.com/bangladesh/2021/04/09/what-is-causing-prison-overcrowding-in-bangladesh>>

60 Asian Legal Resource Centre, "BANGLADESH: Seized State Power and Institutional Collapse Key Behind Continued Enforced Disappearances", August 29, 2019, <<https://alrc.asia/bangladesh-seized-state-power-and-institutional-collapse-key-behind-continued-enforced-disappearances/>>

61 Sumon, S., "Bangladesh: Nearly 1,200 Healthcare Workers Have Contracted COVID-19, Lack of Protective Equipment and Inadequate Testing to Blame", Business and Human Rights Resource Centre, June 14, 2020, <<https://www.business-humanrights.org/en/latest-news/bangladesh-nearly-1200-healthcare-workers-have-contracted-covid-19-lack-of-protective-equipment-and-inadequate-testing-to-blame/>>

62 Prothom Alo English, "Another University Teacher Detained Under Digital Security Act For Facebook Post About Nasim", June 18, 2020, <<https://en.prothomalo.com/bangladesh/another-university-teacher-detained-under-digital-security-act-for-facebook-post-about-nasim>>

63 Mahmud, I., "Digital Security Act Cases on Rise", New Age, June 27, 2020, <<https://www.newagebd.net/print/article/109545>>

64 Kamruzzaman, Md., & Sakib, SM., "Bangladesh Imposes Total Lockdown Over COVID-19", Anadolu Agency, March 25, 2020, <<https://www.aa.com.tr/en/asia-pacific/bangladesh-imposes-total-lockdown-over-covid-19/1778272>>

65 Hossain, E., "Bangladesh issues Covid curbs, bans public gatherings from Jan 13", New Age, January 10, 2022, <<https://www.newagebd.net/article/159600/covid-curbs-issued-rallies-banned-from-jan-13-in-bangladesh>>

turned out to be an effective tool to curb the freedom of peaceful assembly and association in Bangladesh. Student groups and political opposition had faced brutal attacks by the ruling political party's student wing—Bangladesh Chhatra League (BCL)—whenever protests emerged against the government, despite the restrictions imposed due to COVID-19⁶⁶. The police joined the attackers of the ruling party to open fire on the protesters, resulting in over a dozen deaths in the country. The protests had sparked when Indian Prime Minister, Narendra Modi, visited Bangladesh to celebrate the 50th anniversary of its independence⁶⁷. The government hosted the celebration at a time when the regime denied permission to all other political parties and socio-cultural groups to celebrate the same occasion.

Influential leaders of the ruling party were airlifted for the best medical treatment as soon as they tested positive with COVID-19⁶⁸. The government reserved specialised hospitals equipped with ICU and ventilator facilities to ensure improved care for the VIP patients⁶⁹. The hospitals that were left for the ordinary people seriously lacked ICU and other emergency facilities to treat the patients tested positive with COVID-19⁷⁰.

The patients across the country continuously suffered even after over a year due to the lack of facilities⁷¹. There was also a severe crisis of oxygen facilities at the hospitals of the country⁷². The COVID-19 patients of rural areas suffered the most while many had to rush to the capital city, Dhaka, for life-saving treatment⁷³. The capabilities of the hospitals in the capital city were not patient-friendly either⁷⁴. The healthcare service remained poor as usual, particularly for the ordinary people⁷⁵.

The government's policies and actions did not demonstrate its intent of caring about the people. UNICEF, in September 2020, donated lifesaving medical supplies worth US\$12 million to Bangladesh⁷⁶. UNICEF procured 1,200 oxygen concentrators, which isolate oxygen from air and make it usable, and a huge number of high flow nasal cannulas, masks, Personal Protective Equipment (PPE) and other materials, according to the requests of the Directorate General of Health Services (DGHS) of the Ministry of Health of Bangladesh. The supply arrived at the airport in Dhaka and remained unused for months. The government did not bother utilising those costly, and highly necessary, medical supplies for saving people's lives⁷⁷.

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- 66 Prothom Alo English, "At least 25 injured as BCL swoop on anti-Modi protest", March 23, 2021, <<https://en.prothomalo.com/bangladesh/politics/at-least-25-injured-as-bcl-swoop-on-anti-modi-protest>>
- 67 Asian Human Rights Commission, "BANGLADESH: Independent Probe Needed for The Death of Protesters", April 1, 2021, <<http://www.humanrights.asia/opinions/AHRC-JST-005-2021/>>
- 68 The Business Standard, "COVID-19: Ex-Sylhet Mayor Kamran Airlifted to Dhaka", June 7, 2020, <<https://www.tbsnews.net/coronavirus-chronicle/covid-19-bangladesh/covid-19-ex-sylhet-mayor-kamran-airlifted-dhaka-90061>>
- 69 New Age, "Sheikh Russel Hospital to treat VIP Patients", April 23, 2020, <<https://www.newagebd.net/article/104929/sheikh-russel-hospital-to-treat-vip-patients>>
- 70 Tasneem, S., "Bangladesh's Hospitals Severely Lacking ICU Facilities", The Straits Times, June 19, 2020, <<https://www.straitstimes.com/asia/bangladeshs-hospitals-severely-lacking-icu-facilities-daily-star-columnist>>
- 71 The Financial Express, "Hospitals in 37 Districts Lack ICU facilities", June 20, 2021, <<https://thefinancialexpress.com.bd/health/hospitals-in-37-districts-lack-icu-facilities-1624099064>>
- 72 Akhter, F., "Oxygen Crisis and the Fault in Our Healthcare System", UBINIG, July 2021, <<https://ubinig.org/index.php/home/showArticle/242/english/Farida-Akhter/Oxygen-crisis-and-the-fault-in-our-healthcare-system>>
- 73 Mamun, S. & Sultana, M., "Hospitals Run Out of Beds, ICUs as Rural Patients Rush to Dhaka", Dhaka Tribune, August 3, 2021, <<https://archive.dhakatribune.com/bangladesh/dhaka/2021/08/03/hospitals-run-out-of-beds-ic-us-as-rural-patients-rush-to-dhaka>>
- 74 Rahman, S. & Deepto, A., "Covid-19 ICU Shortfall in Dhaka Hospitals Too", Prothom Alo English, July 19, 2021, <<https://en.prothomalo.com/bangladesh/icu-shortfall-in-dhaka-hospitals-too>>
- 75 Hossain, M., "Covid Patients Suffocate due to ICU Crisis in Bangladesh", New Age, August 4, 2021, <<https://www.newagebd.net/article/145471/covid-patients-suffocate-due-to-icu-crisis-in-bangladesh>>
- 76 UNICEF, "UNICEF Provides Over US\$12 Million Worth of PPE and Lifesaving Medical Supplies for Bangladesh's COVID-19 Response", September 6, 2020, <<https://www.unicef.org/bangladesh/en/press-releases/unicef-provides-over-us12-million-worth-ppe-and-lifesaving-medical-supplies>>
- 77 Moral, S. & Islam, R., "Coronavirus treatment Life-saving medical equipment lying idle", Prothom Alo English, April 13, 2021, <<https://en.prothomalo.com/bangladesh/life-saving-medical-equipment-lying-idle>>

Experts of the health administration sector accused the government of mismanagement, inefficiency, and negligence along with the irregularities and corruption⁷⁸. The government's procurement process for the COVID-19 medical supply involved high level corruption⁷⁹.

The COVID-19 pandemic had a long-lasting impact on the economic life of the ordinary people. The unjustified and discriminatory policies adopted by the regime became a nightmare to the poor workers who temporarily or permanently lost their livelihood. Many families were forced to relocate to their rural ancestral home and stop their children's schoolings in urban setups as they lost their occupation and any means to survive.

The government made advance payments⁸⁰ for purchasing the Oxford AstraZeneca vaccines from Serum Institute of India which triggered massive criticisms⁸¹. The procurement and delivery process never had any accountability after the Indian company's failure to deliver the orders that it received from the Bangladeshi government⁸².

The policies and actions of the Government of Bangladesh created a cycle of human rights violations during the COVID-19 pandemic. The

regime ignored the interests of the larger population in several aspects including the livelihood, living costs, and affordability, in parallel to availability of necessary commodities. Protecting the ordinary people's wellbeing apparently did not exist in the governmental priorities.

Governmental incentives aimed at the workers of the garment sector failed to protect their jobs⁸³. The regime's policies to disburse incentive, lacked comprehensive vision to accommodate the larger population while extreme poverty rose by 60 per cent within weeks since the outbreak of the pandemic⁸⁴. The trend of increased poverty continued even by the end of 2021 when an estimated 32 million people were plunged into poverty⁸⁵.

The government's decision of imposing 'lockdown' under the guise of 'general holiday' had an immediate impact on the livelihood of the low-income citizens living the urban areas due to pay-cuts or job-loses⁸⁶. Tens of thousands of city-dwellers had no other choice but to leave the cities for their ancestral homes as lockdown ultimately barred people from continuing their informal occupation⁸⁷.

The lockdown forced low-income people to lose their occupation such as day-labourer, rickshaw-puller,

78 Ibid.

79 Islam, R., "Health sector Discrepancies of Tk 3.5b in emergency procurement", Prothom Alo English, April 30, 2021, <<https://en.prothomalo.com/bangladesh/discrepancies-of-tk-35b-in-emergency-procurement>>

80 BD News 24 Dot Com, "Bangladesh to Pay Tk 6bn in Advance for Oxford COVID Vaccine", January 3, 2021, <<https://bdnews24.com/bangladesh/bangladesh-to-pay-tk-6bn-in-advance-for-oxford-covid-vaccine>>

81 TIME, "The World's Largest Vaccine Manufacturer Stumbled in 2021. Its CEO Bets He Can Still Help End COVID-19", January 19, 2022, <<https://time.com/6132402/serum-institute-of-india-covid-19-vaccine/>>

82 The Daily Star, "Serum Institute Has No Right to Halt Vaccine Supply After Bangladesh Paid in Advance: Papon", 24 April 2022, <<https://www.thedailystar.net/coronavirus-deadly-new-threat/news/serum-institute-has-no-right-halt-vaccine-supply-after-bangladesh-paid-advance-papon-2082969>>

83 The Financial Express, "0.35m RMG Workers Lost Jobs During Pandemic, Survey Finds", January 23, 2021, <<https://thefinancialexpress.com.bd/trade/035m-rmg-workers-lost-jobs-during-pandemic-survey-finds-1611395454>>

84 The Business Standard, "Extreme poverty rises 60% amid Covid-19 outbreak: Brac survey", April 11, 2020, <<https://www.tbsnews.net/coronavirus-chronicle/covid-19-bangladesh/extreme-poverty-rises-60-percent-amid-covid-19-brac-survey>>

85 Islam, A., "COVID in Bangladesh: Millions Plunged into Poverty", Deutsche Welle, November 16, 2021, <<https://www.dw.com/en/covid-in-bangladesh-how-have-lockdowns-plunged-millions-into-poverty/a-59835993>>

86 Ali, S. & Amin, N., "Low-Income People Leaving Dhaka", The Business Standard, June 23, 2020, <<https://www.tbsnews.net/coronavirus-chronicle/covid-19-bangladesh/low-income-people-leaving-dhaka-96850>>

87 Ahamad, R., "Families leaving Dhaka as Coronavirus Crisis Hits Livelihood", New Age, June 27, 2020, <<https://www.newagebd.net/article/109552/families-leaving-dhaka-as-coronavirus-crisis-hits-livelihood>>

small vendors, street-hawkers, and ridesharing⁸⁸. The 'general holiday' was indeed imposed as a 'lockdown' across the country to generally shut down all public mobility and movements. The ban on public mobility did not come with any forms of emergency incentives to the ordinary public or the poor community whether in cash or kind, such as food grains and other necessary commodities.

Ordinary people's access to food at an affordable price and standard quality in terms of nutrition could not be guaranteed due to various policies of the government⁸⁹. The situation of the right to food steeply deteriorated during the COVID-19 pandemic as the governmental measures were insensitive to the people's plights.

A report from the United Nations Development Programme (UNDP) claims that 2.9 million people in and around the targeted cities had become 'newly poor' after the COVID-19 pandemic⁹⁰. The figure could rise to an estimated 4.3 million or more if the lockdown and unemployment persisted.

- Freedom of Peaceful Assembly and Association

The 'lockdown' in the guise of 'general holiday' that the Bangladesh Government had imposed within 2 weeks since the first case of COVID-19 officially reported in March 2020 banned all forms of public events⁹¹. The ban included political meetings⁹², social ceremonies, academic lessons at schools⁹³ and universities⁹⁴, and all forms of public gatherings⁹⁵. The pro-ruling party cultural group declared suspension of all cultural gatherings after the first death due to COVID-19 as early as on 18th March in 2020 – just 10 days after the infection in COVID-19 was officially acknowledged⁹⁶.

On March 26, 2021, which marked the 50th anniversary of the inception of Bangladesh as an independent nation-state, the Sheikh Hasina government decided to celebrate the golden jubilee⁹⁷ amidst the COVID-19 outbreak. Indian Prime Minister, Narendra Modi was invited to the celebration as the chief guest⁹⁸. In contrast, the opposition had to cancel the celebration of golden jubilee COVID-19 cases surged⁹⁹. The government

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- 88 Mamum, S., "Ride-Sharing Services Remain Suspended As Public Transport Resumes Amid Covid-19 Pandemic", Dhaka Tribune, May 31, 2020, <<https://archive.dhakatribune.com/bangladesh/2020/05/31/ride-sharing-apps-remains-suspended-as-public-transport-resume-amid-covid-19-pandemic>>
- 89 UBINIG, "Assessing The Situation of Poverty and Hunger- Related Violation of Human Rights in Bangladesh", April 4, 2023, <<https://tinyurl.com/3v3c5dna>>
- 90 UNDP Bangladesh, "Millions of Bangladesh's Urban Poor Took the Biggest Hit During the COVID Pandemic", January 25, 2021, <<https://tinyurl.com/4jzpm4>>
- 91 Prothom Alo English, "Bangladesh Extends General Holiday Till 16 May", May 4, 2020, <<https://en.prothomalo.com/bangladesh/government/bangladesh-extends-general-holiday-till-16-may-2>>
- 92 Prothom Alo English, "Ban on Public Rallies In Open Space Unacceptable: BNP", January 12, 2022, <<https://en.prothomalo.com/bangladesh/politics/ban-on-public-rallies-in-open-space-unacceptable-bnp>>
- 93 Paul, R., "Bangladesh extends school shutdown over second COVID-19 wave", Reuters, November 12, 2020, <<https://www.reuters.com/article/us-health-coronavirus-bangladesh-educati-idUKKBN27S26A>>
- 94 Dhaka Tribune, "Coronavirus: DU, Buet, Other Public Universities Suspend Classes and Exams", March 16, 2020, <<https://tinyurl.com/3sf7m6nm>>
- 95 Kamruzzaman, Md., "Bangladesh Imposes New Restrictions on Public Movement", Anadolu Agency, May 4, 2020, <<https://www.aa.com.tr/en/asia-pacific/bangladesh-imposes-new-restrictions-on-public-movement/1828684>>
- 96 BD News 24 Dot Com, "All cultural gatherings in Bangladesh suspended after first coronavirus death", March 18, 2020, <<https://bdnews24.com/bangladesh/bangladesh-suspends-cultural-activities-after-first-coronavirus-death>>
- 97 The Business Standard, "Celebration of Bangabandhu's Birth Centenary, Golden Jubilee of Independence from Wednesday", March 16, 2021, <<https://tinyurl.com/4nubjt28>>
- 98 Hindustan Times, "PM Modi to attend golden jubilee celebrations of Bangladesh independence", March 13, 2021, <<https://tinyurl.com/4dyuvdbb>>
- 99 New Age, "BNP Postpones Golden Jubilee Programmes As COVID-19 Cases Surge", March 24, 2021, <<https://www.newagebd.net/article/133579/article/35972>>

hosted the giant celebration at a time when approximately 83 COVID-19 deaths and over 7,000 infections per day were being reported according to the national data¹⁰⁰.

Different Bangladeshi leftist and Islamic groups protested the decision of inviting Indian Prime Minister Narendra Modi to such a historic event¹⁰¹. The Government of Bangladesh deployed Border Guards and armed police with live ammunition against the protesters¹⁰². The armed police, security forces, and the ruling party's student wing Bangladesh Chhatra League (BCL) attacked the peaceful protesters¹⁰³.

According to the officially acknowledged figure, 17 people were killed in gunshots fired by law-enforcement agencies and scores were injured during the 'Anti-Modi protests'¹⁰⁴. Then on 1st April 2021, the Bangladesh government abruptly announced a spike of COVID-19 cases, along with a new set of restrictions¹⁰⁵. Such a sudden announcement apparently indicates that the government manipulated the COVID-19 injection data for a politically motivated agenda of denying the right to freedom of assembly.

4. Repressive Laws and Policies:

4.1 Repressive Laws or Policies That Existed Pre-Pandemic and Continued During the Pandemic

Draconian laws with sweeping powers to the police were abused to curb civic space during the COVID-19 pandemic¹⁰⁶. Journalists, cartoonists, and social media critics were arbitrarily detained despite public demands for releasing them¹⁰⁷. The critics of corruption and anti-people policies were forced to languish in jails for prolonged periods¹⁰⁸.

- Digital Security Act-2018 (DSA)

The Digital Security Act (DSA) 2018¹⁰⁹ is one such law that the Government of Bangladesh widely used during the COVID-19 pandemic. The government adopted this law in October 2018. It was intended to 'prevent crimes through digital devices and provide security in the digital sphere'. In reality, it interrupts media operations, censors content, and controls the freedom of expression in all print and virtual platforms. The law overwhelmingly empowers the police to enter premises, conduct bodily search of persons, seize digital devices and network servers and anything related to digital communication on suspicion without a search warrant.

100 Marxist Dot Com, 16 April 2021, Bangladesh: ruling class holds Golden Jubilee celebrations while thousands perish < <https://www.marxist.com/bangladesh-golden-jubilee-celebrations-thousands-perish.htm>>

101 Alam, J., "India's PM Modi Visits Bangladesh, Sparking Violent Protests", AP News, March 26, 2021, <<https://tinyurl.com/2wryjpw5>>

102 Hasina, S., "Bangladesh Deploys Border Guards After Deadly Anti-Modi Protests", Al Jazeera, March 27, 2021, <<https://www.aljazeera.com/news/2021/3/27/bangladesh-deploys-border-guards-after-deadly-anti-modi-protests>>

103 Prothom Alo English, "At least 25 injured as BCL swoop on anti-Modi protest", March 23, 2021, <<https://en.prothomalo.com/bangladesh/politics/at-least-25-injured-as-bcl-swoop-on-anti-modi-protest>>

104 BBC, "Why Narendra Modi's Visit to Bangladesh Led to 12 Deaths", March 31, 2021, <<https://www.bbc.com/news/world-asia-56586210>>

105 Mahmud, F., "Bangladesh Sees Record High Daily Coronavirus Cases Amid Surge", Al Jazeera, April 1, 2021, <<https://www.aljazeera.com/news/2021/4/1/bangladesh-witnesses-a-record-surge-in-coronavirus-cases>>

106 Asian Human Rights Commission, "BANGLADESH: Authoritarian Repression In Curbing Civic Space Harms More Than the Pandemic", January 20, 2021, <<http://www.humanrights.asia/news/ahrc-news/AHRC-STM-002-2021/>>

107 New Age, "Cartoon Show Demands Cartoonist's Release", January 24, 2021, <<https://www.newagebd.net/article/128216/cartoon-show-demands-cartoonists-release>>

108 CIVICUS, "Journalists in Bangladesh Face Criminalisation Amid the Pandemic While Critics Are Silenced", June 19, 2020, <<https://tinyurl.com/584txunz>>

109 Government of People's Republic of Bangladesh, "Digital Security Act-2018", September 30, 2019, <<https://www.cirt.gov.bd/wp-content/uploads/2020/02/Digital-Security-Act-2020.pdf>>

The police can arbitrarily arrest anyone without a valid arrest warrant¹¹⁰. 14 of the 20 offences under the DSA are non-bailable¹¹¹.

The law empowers the Director General of the Bangladesh Telecommunication Regulatory Commission (BTRC) to remove any content from digital platforms or block the platform upon 'satisfaction' without any transparent process¹¹². The law states that *'If an individual generates propaganda against The Liberation War, Spirit of Liberation War, Father of the Nation, National Anthem and National Flag or assists in such a process then such action will be considered a crime'*, is punishable with life term and a fine of BDT 30 million (approximately US\$248,487)¹¹³. Publication or broadcast of information in any electronic format that is deemed to hurt the religious values or sentiments is punishable with 5 to 10 years imprisonment and a fine of BDT 1 to 2 million¹¹⁴.

Publication or transmission of defamatory information is punishable with 3 to 5 years imprisonment with a fine of BDT300,000 to 1 million¹¹⁵.The law states that, *'If any person intentionally publishes or transmits anything in website or digital layout that creates enmity, hatred or hostility among different classes or communities of the society, or destroys communal harmony, or creates unrest or disorder, or deteriorates or advances to deteriorate the law and order situation, then such act of the person shall be an offence.'*

This is punishable with 7 to 10 years' imprisonment and BDT500,000 to 1 million fines¹¹⁶.

The government used the DSA to clamp down on the civic spaces during the pandemic¹¹⁷, which created a culture of fear within society¹¹⁸. The government secretly scheduled 29 public entities under the DSA as 'critical information infrastructure' barring the media to have access to information from those entities, including the Prime Minister's Office¹¹⁹.

Research data suggest that at least 3,125 people were charged in a total of 1,132 cases registered between October 8, 2018 – the date of adoption of the DSA—and February 27, 2023¹²⁰. The registration cases under the DSA spiked during the COVID-19 pandemic. Ever since the onset of the pandemic—on March 8, 2020—871 cases have been registered under the DSA up till the end of 2022 against over 200 people¹²¹. Most of those detainees were denied bail by the courts on several occasions. The defendants include 9.3 per cent dissident politicians, and 9 per cent journalists as the second highest amongst all other identifiable professionals¹²².

The repressive nature of the law and its ill-motivated implementation can be comprehensively understood through a few cases that are presented below.

110 Ibid.

111 Ibid.

112 Ibid.

113 Ibid.

114 Ibid.

115 Ibid.

116 Ibid.

117 Asian Human Rights Commission, "BANGLADESH: Stifling Expression Using Digital Security Act Must Not Be the Norm to Address COVID-19 Pandemic", May 11, 2020, <<https://tinyurl.com/366nuskf>>

118 Riaz, A., "How Bangladesh's Digital Security Act Is Creating a Culture of Fear", Carnegie Endowment for International Peace, December 9, 2021, <<https://tinyurl.com/yvk69kzh>>

119 The Business Standard, "29 Organisations Listed As 'Critical Information Infrastructure' Under DSA", October 3, 2022, <<https://tinyurl.com/msaxkv5m>>

120 Centre for Governance Studies, "Data Tracker – The Digital Security Act 2018", Annex-A, February 27, 2023 <<https://freedominfo.net/>>

121 Ibid, Annex-B

122 Centre for Governance Studies, Data Tracker, 27 February 2023 <<https://freedominfo.net/>>

» [Detained Writer Mushtaq Ahmed's Death in Jail](#)

The case of writer Mushtaq Ahmed is a glaring example of repression under the DSA. Mushtaq Ahmed published an analytical article on an online portal about corruption in procurements and discriminatory healthcare management in April 2020. On May 2, 2020, the Rapid Action Battalion (RAB) picked him up from his residence in Dhaka and his whereabouts remained unknown. After three days' disappearance, the RAB claimed that the writer was detained in a case under the DSA. His bail petitions were rejected on six occasions while he was detained for 10 months until his death in jail¹²³. He died in April 2021 while in custody at Kashimpur prison¹²⁴.

» [Cartoonist Ahmed Kabir Kishore Tortured in RAB's Detention](#)

Bangladeshi cartoonist Ahmed Kabir Kishore, was picked up from his residence in Dhaka on May 2, 2020 by ununiformed and unidentified men. In the 'illegal' custody, he was tortured and kept in incommunicado detention¹²⁵. He was kept in illegal custody for three days. On 5th May, the RAB acknowledged that Kishore was 'arrested' together with Mushtaq—in the same DSA case. They falsely claimed that Kishore was arrested in the evening on May 5, 2020. A High Court Bench granted bail to Kishore only after Mushtaq died in prison, which triggered national and international outrage¹²⁶. After 307 days of arbitrary detention, Kishore was

released from jail on March 5, 2021. Journalists found scars of torture on his body when he came out of the prison. The case filed against Kishore by the RAB continues.

As a victim of torture, Kishore's struggle to seek justice became extremely harder due to an entrenched culture of impunity. Kishore filed a complaint with the Chief Metropolitan Magistrate's (CMM) Court of Dhaka under the Torture and Custodial Death (Prevention) Act of 2013 against unidentified perpetrators on March 10, 2021¹²⁷. The Court assigned the Police Bureau of Investigation (PBI) to investigate the case¹²⁸. The Court also ordered a medical board to submit a medical check-up report regarding the allegation of torture. A three-doctor medical board from Dhaka Medical College Hospital, in its medical examination report, claimed that 'no signs of torture were found' on Kishore's body¹²⁹. The medical board's findings are a formality intended to ensure impunity for the perpetrators.

The PBI submitted its investigation report, on October 17, 2021, claiming that 'no evidence found about torture' in relation to Kishore's allegation of custodial torture¹³⁰. A 'no confidence' petition of Kishore against the PBI investigation report is currently pending further action¹³¹. Kishore left Bangladesh to live in exile since there was hardly any protection for him from the justice institutions of his native country¹³². Bangladesh's judiciary and the

123 New Age, "Writer Mushtaq Detained Under DSA dies in Jail", February 25, 2021, <<https://www.newagebd.net/article/131159/writer-mushtaq-detained-under-dsa-dies-in-jail>>

124 Al Jazeera, <https://www.aljazeera.com/news/2021/2/26/anger-in-bangladesh-over-prominent-writers-death-in-prison>, 26 February 2021

125 Committee to Protect Journalists, "https://cpj.org/2021/03/jailed-digital-security-act-bangladeshi-cartoonist-kabir-kishore-tortured/", March 30, 2021.

126 Mahmud, F., "Bangladeshi Cartoonist Granted Bail After Widespread Protests", Al Jazeera, March 3, 2021, <<https://www.aljazeera.com/news/2021/3/3/cartoonist-gets-bail-in-bangladesh-after-widespread-protests>>

127 New Age, "Case Filed for Torture on Cartoonist Kishore in Custody", March 11, 2021, <<https://www.newagebd.net/article/132305/case-filed-for-torture-on-cartoonist-kishore-in-custody>>

128 The Business Standard, "PBI to Probe Case Filed by Kishore Against Members of Law Enforcement", March 14, 2021, <<https://www.tbsnews.net/bangladesh/pbi-investigate-torture-cartoonist-kishore-216229>>

129 New Age, "Medical Board Finds No Signs Of Torture on Kishore", June 7, 2021, <<https://www.newagebd.net/article/139971/medical-board-finds-no-signs-of-torture-on-kishore>>

130 The Business Standard, "No One Tortured Kishore: PBI", November 17, 2021, <<https://www.tbsnews.net/bangladesh/crime/no-one-tortured-kishore-pbi-331150>>

131 New Age, "Cartoonist Kishore Files No-Confidence Petition Against PBI Report", November 24, 2021, <<https://www.newagebd.net/article/155575/cartoonist-kishore-files-no-confidence-petition-against-pbi-report>>

132 Interview with Ahmed Kabir Kishore (NO LINK GIVEN)

government ensured that the Torture and Custodial Death (Prevention) Act is not fairly exercised against the perpetrators of RAB for torturing cartoonist Kishore, and writer Mushtaq.

» **Exiled Journalists Charged in DSA Case**

The Counter Terrorism and Transnational Crime Unit (CTTCU) of the Dhaka Police charged 6 people under DSA including two exiled journalists together with Mushtaq Ahmed and Ahmed Kabir Kishore¹³³. The two journalists – Sweden-based journalist Tasneem Khalil¹³⁴, Chief Editor of Netra News, and UK-based journalist Zulkarnain Saer Khan¹³⁵ of Al Jazeera Investigative Unit, who are known for their investigative journalistic reports on scandalous corruption and abuse of power by high profile people in Bangladesh, got an arrest warrant issued against them by the Court.

» **Journalists Ruhul Amin Gazi and Abul Asad Arbitrarily Detained**

The arbitrary arrest and prolonged detention of two journalists of a pro-opposition national daily, prior to and during the COVID-19 pandemic can explain the way the DSA is being abused by the government of Bangladesh to silence the dissent. Ruhul Amin Gazi, Chief Reporter of The Daily Sangram - a pro-opposition newspaper representing the Bangladesh Jama'at-E-Islami (BJI) party - had to languish in jail for seventeen months¹³⁶. The police arrested him on October 21, 2020 on the charge of sedition under the DSA although he was not an accused in the original trumped-up case¹³⁷.

Gazi, together with Abul Asad, editor of The Daily Sangram, had faced an alleged sedition charge

over publication of a news article which termed Abdul Quader Molla - an opposition political figure whom the Sheikh Hasina regime executed in 2013 for alleged war crimes – as a 'martyr'¹³⁸. Months before the outbreak of COVID-19, the government arbitrarily detained Abul Asad in a DSA case. The cadres of 'Muktijuddho Mancha', a pro-ruling party group, physically assaulted Asad in his newspaper office and filed a case under DSA¹³⁹.

The police arrested him on December 13, 2019. During the peak of COVID-19, Asad was arbitrarily detained till December 7, 2020. There was no remedy available for the attack and vandalism at the newspaper, while Asad had to languish in jail for a year for publishing an article¹⁴⁰. The perpetrators of the attacks have not yet been held accountable.

» **Disappearance and Detention of Journalist Shafiqul Islam Kajol**

Shafiqul Islam Kajol, a photojournalist and the editor of an online news portal named 'Pakkhokal', was charged under DSA. He went missing on March 10, 2020, a day after a ruling party parliament member filed a criminal defamation suit against Shafiqul under the DSA. The pattern of behaviors of the state apparatus indicates that he was subjected to enforced disappearance. Shafiqul reappeared after 53 days on May 3, 2020 in 'police custody', a town close to the Indian border. The police claimed that he had 'trespassed' from India to Bangladesh through a paddy field. He faces at least three cases under the repressive DSA for allegedly publishing 'false, offensive, illegally obtained and defamatory' content on Facebook that 'could deteriorate law and

133 New Age, "Fresh Charge Sheet Against Kishore, 6 Others in DSA Case", June 12, 2021, <<https://www.newagebd.net/article/140443/fresh-charge-sheet-against-kishore-6-others-in-dsa-case>>

134 Committee to Protect Journalist, "Branch of Bangladesh Ruling Party Files Complaint Against Sweden-Based Journalist Tasneem Khalil", October 12, 2021, <<https://tinyurl.com/2tuzjp9f>>

135 Khan, Z. S., Ritzen, Y., & Hirten, K., "Notorious Bangladesh police unit received spy training in the UK", Al Jazeera, December 7, 2022, <<https://tinyurl.com/bdhs3nz4>>

136 New Age, "BFUJ Former President Ruhul Amin Gazi Released from Jail", March 22, 2022, <<https://www.newagebd.net/article/166118/bfuj-former-president-ruhul-amin-gazi-released-from-jail>>

137 The Business Standard, "Journalist Ruhul Amin Gazi Arrested", October 21, 2020, <<https://www.tbsnews.net/bangladesh/journalist-ruhul-amin-gazi-arrested-148135>>

138 Al Jazeera, <https://www.aljazeera.com/news/2019/12/14/bangladesh-editor-arrested-after-report-on-executed-jamaat-leader>, 14 December 2019.

139 <https://bdnews24.com/bangladesh/bangladesh-newspaper-office-vandalised-after-it-called-hanged-war-criminal-a-martyr>

140 Prothom Alo English, "Daily Sangram Editor Put On 3-Day Remand", December 14, 2019, <<https://en.prothomalo.com/bangladesh/Bangladesh-Daily-Sangram-editor-put-on-3-day>>

order'. The police has also registered a fourth case against Shafiqul Islam Kajol under the Bangladesh Passport Order 1973, accusing him of 'trespassing' into his own country on May 3, 2020.

On December 25, 2020, Shafiqul was released on bail from Dhaka Central Jail. A High Court Bench, on December 17, 2020, granted him bail in two cases filed under the Digital Security Act (DSA). Therefore, he had secured bail in all three DSA cases filed against him as the third case was filed under bailable provision of the law. Two days earlier, the courts had already expressed grave concern as neither the investigating officer (IO) nor the Cyber Tribunal explained the delay in concluding the probe of the last two DSA cases.

In May 2020, UN experts expressed alarm at the ongoing persecution of Shafiqul Islam Kajol. They said: '[T]he targeting of investigative journalists like Shafiqul Islam Kajol raises serious questions about Bangladesh's commitment to a free and independent media. Such persecution has devastating consequences for the journalists and their families – and also for society as a whole.'¹⁴¹

On November 8, 2021, the Cyber Tribunal of Dhaka framed charges against Kajol for 'circulating indecent, defamatory, objectionable, and fake information about some ministers, lawmakers, and top Jubo Mahila League [ruling party Bangladesh Awami League's female wing] leaders on Facebook in three cases.'¹⁴²

» [Opposition Lawyer Nipun Roy Chowdhury Arbitrarily Detained and Tortured](#)

Nipun Roy Chowdhury, a female lawyer and opposition political leader, was arbitrarily detained for 83 days – from March 28 to June 18, 2021¹⁴³. She, as a leading member of the minority rights unit of the opposition political party - Bangladesh Nationalist Party (BNP) - participated in a fact-finding mission of the BNP, to investigate the atrocities committed by the ruling party leader on Hindu community in Shalla Upazilla in Sunamganj district. The fact-finding report was published on March 25, 2021 at a press conference in Dhaka - the day before Indian Prime Minister Narenadra Modi was scheduled to visit Bangladesh for the golden jubilee celebrations.

On March 28, 2021, a plain clothed team of Rapid Action Battalion (RAB) abducted her while she remained disappeared for hours. Late in the evening, the RAB admitted that it had arrested Nipun, and a case had been filed against her under the Anti-Terrorism Act for alleged 'conspiracy and subversion'. She has been denied bail twice since her arrest and was in police remand for 3 days. Her family accused the members of RAB of beating her during her detention in RAB's custody¹⁴⁴. Nipun was released from jail on bail on June 18, 2021. Since then, she remains silent about her experiences under custody.

» [Journalist Rozina Islam Detained under Official Secrets Act](#)

The Bangladesh Government used Official Secrets Act¹⁴⁵, a colonial era legislation to implicate journalist Rozina Islam, a journalist of a Bangladeshi bilingual national daily—Prothom Alo—in 2021, for alleged collection of 'secret official documents of the government'.

141 OHCHR, "Bangladesh Must End Persecution of Journalist, Say UN Experts", May 26, 2020, <<https://www.ohchr.org/en/press-releases/2020/05/bangladesh-must-end-persecution-journalist-say-un-experts>>

142 The Daily Star, "Court Frames Charges Against Photojournalist Kajol in 3 DSA Cases", November 8, 2021, <<https://tinyurl.com/jysktm5c>>

143 Asian Legal Resource Centre, "BANGLADESH: Government Uses Arbitrary Detention and Degenerated Judiciary Against Dissidents", September 14, 2021, <<https://alrc.asia/bangladesh-government-uses-arbitrary-detention-and-degenerated-judiciary-against-dissidents/>>

144 Amnesty International, "Bangladesh Authorities Must Conduct Prompt, Thorough, Impartial, and Independent Investigations Into the Death Of Protesters and Respect People's Right to Peaceful Assembly", April 1, 2021, <<https://www.amnesty.org/en/latest/news/2021/04/bangladesh-protests-statement/>>

145 Laws of Bangladesh, "The Official Secrets Act, 1923", April 2, 1923 <<http://bdlaws.minlaw.gov.bd/act-132.html>>

Rozina Islam was reputed for publishing investigative reports on the prevailing corruption in procurement of equipment and materials that were required for managing the COVID-19 pandemic. One of her reports entitled ‘Discrepancies of Tk 3.5b in emergency procurement’, which highlighted massive corruption in the health sector during the COVID-19 pandemic, antagonised the government and led to her arbitrary detention¹⁴⁶.

On 17 May 2021, Roniza Islam went to the Ministry of Health at the Bangladesh Secretariat for her professional journalistic works where she was locked in a room with her personal cell phone confiscated. After being detained for several hours by officials of the Ministry of Health in Dhaka, the bureaucrats handed Rozina Islam over to the Shahbagh police. The police then arrested her under Sections 379 and 411 of the Code of Criminal Procedure, and Sections 3 and 5 of the Official Secrets Act for allegedly collecting sensitive government documents and taking photos of them. On May 18, 2021, the police produced her before the Chief Metropolitan Magistrate Court of Dhaka. She was then sent to Kashimpur Central Jail.

Rozina Islam was released on bail on May 23, 2021 after the CMM Court granted it with a condition of surrendering her passport and payment of a bond of BDT5,000 (US\$50)¹⁴⁷. However, even after that, she has continuously faced judicial harassment as the Court—on January 23, 2023—ordered the Police Bureau of Investigation (PBI) to re-investigate

her case despite a previous investigation report of the Detective Branch (DB) of Police not finding any evidence against her¹⁴⁸. The Health Ministry bureaucrat, who filed the complaint against Rozina, had filed a ‘no confidence’ petition before the Court challenging the police’s ‘final report’¹⁴⁹.

Following the complainant’s petition, the Court ordered that further investigation into the case against Rozina Islam be done. As a result, judicial harassment continues against Rozina but in contrast, the United States Department of States has recognised Rozina’s journalistic work by presenting her the Anti-Corruption Champions Award in 2022¹⁵⁰.

4.2 Laws, Policies and Regulations Introduced During the Pandemic That Had Implications on Civic Space and Human Rights

In recent years, the government made consistent moves to adopt draconian laws to control the freedom of expression and opinion, the freedom of press, and the freedom of peaceful assembly and of association. The Government of Bangladesh was drafting one law after another to control media and civic space.¹⁵¹

Personal Data Protection Bill of 2021

Since October 2020 the Government of Bangladesh, accelerated the pace of adopting a bill titled ‘Personal Data Protection Act’¹⁵²—which entailing a vague definition—authorised the executive authorities

146 Islam, R., “Discrepancies of Tk 3.5b in Emergency Procurement”, Prothom Alo English, April 30, 2021, <<https://en.prothomalo.com/bangladesh/discrepancies-of-tk-35b-in-emergency-procurement>>

147 Urgent Appeal Issued by Five Independent Human Rights Experts of the United Nations Special Procedures, June 28, 2021 <<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=26457>>

148 Prothom Alo English, “PBI Directed to Further Investigate Case Against Journalist Rozina”, January 24, 2023, <<https://en.prothomalo.com/bangladesh/1w9w7mut0d>>

149 ‘Final Report’ is often used in Bangladeshi criminal justice system when an investigation report claims that the allegations could not be substantiated by available evidence relation to the case concerned.

150 United States Department of State, “Secretary Antony J. Blinken Conversation with 2022 Department of State Anti-Corruption Champion Award Honorees”, December 9, 2022, <<https://www.state.gov/secretary-antony-j-blinken-conversation-with-2022-department-of-state-anti-corruption-champion-award-honorees/>>

151 Quadir, S., & Paul, R., “Bangladesh Drafts New Legislation Seen Targeting Press Freedom”, Reuters, October 16, 2018, <<https://www.reuters.com/article/bangladesh-politics-journalism-idUSL3N1WW3TK>>

152 The Personal Data Protection Act, Accessed June 27, 2023, <<http://www.humanrights.asia/wp-content/uploads/2021/09/Personal-Data-Protection-Bill-2nd-Draft.pdf>>

with sweeping power and posing threats to human rights activism and research in the country¹⁵³. Human rights groups have expressed serious concerns over the overriding effect of the proposed law, which remains in the queue of adoption in a one-party controlled parliament¹⁵⁴. Section 3 of the bill poses apparently higher risks of an overwhelming coercion of personal data by state agencies which is feared to be used against individuals and entities whom the state targets.

According to a review on the PDP Bill's second draft, the Asian Human Rights Commission (AHRC) observes, '[T]he executive authorities are empowered to act with impunity subsiding the judicial process. The citizens have no access to the justice institutions if the Executive Authorities encroach the right to protection of personal data.'¹⁵⁵

The PDP Bill is aimed to corroborate the Digital Security Agency constituted under the DSA¹⁵⁶. The authorities are empowered to access to personal data of individual citizens, foreigners, any company or entity available within the jurisdiction of Bangladesh for the purpose of 'prevention, detection, investigation of an offence or for national security'¹⁵⁷. In the absence of any principled guidelines of protecting the right to privacy of the citizens' data, the PDP provisions are feared to be used for surveillance on individuals or entities¹⁵⁸. The law empowers the Data Controller to impose a 'code of conduct' on anyone or any entity with

'legitimate interest'¹⁵⁹. There are apprehensions that their powers will be arbitrarily used against the citizens of Bangladesh¹⁶⁰.

The power of the Data Controller to exempt any person or entity from abiding by the law, and revoke its official, order widens the room for abuse of the law with political motivation¹⁶¹. The provisions of blanket impunity for exercising the power of the Director General not only undermines the judiciary but also deprives citizens to seek professional accountability and elevate the executive authorities above the justice institutions of Bangladesh¹⁶².

Telecommunication Regulatory Commission Regulation for Digital, social media, and OTT Platforms, 2022

The Bangladesh government has prepared a draft regulation for controlling the digital, social media, and OTT platforms.. The United Nations Special Rapporteur on Promotion and Protection of the Right to Freedom of Expression and Opinion has, however, expressed concerns over this draft Regulation¹⁶³.

The Rapporteur stated, 'the current draft contains some key provisions that could undermine this intended objective, as well as infringe international human rights rules and principles. In particular, the Regulation draft uses vague and broadly worded terms that would create legal uncertainty and risk incentivising the removal of legal content, targeting both illegal and legal content that is perceived

153 Asian Human Rights Commission, "BANGLADESH: Sweeping Empowerment of Executive Authorities with Impunity in Personal Data Protection Bill Will Endanger Rights Activism and Research", October 27, 2021, <<http://www.humanrights.asia/news/ahrc-news/AHRC-STM-025-2021/>>

154 Ibid.

155 Ibid.

156 Section 36 of the Personal Data Protection (PDP) Bill

157 Section 10 of the PDP Bill

158 Section 7 of the PDP Bill

159 Section 28 of the PDP Bill

160 Asian Human Rights Commission, "BANGLADESH: Sweeping Empowerment of Executive Authorities with Impunity in Personal Data Protection Bill will Endanger Rights Activism and Research", October 27, 2021, <<http://www.humanrights.asia/news/ahrc-news/AHRC-STM-025-2021/>>

161 Section 34 of the PDP Bill

162 Sections 60 and 65 of the PDP Bill

163 United Nations Special Rapporteur on Promotion and Protection of the Right to Freedom of Opinion and Expression, February 6, 2023 <<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=27845>>

as harmful in potential violation of international human rights principles.’ Expressing concerns the Independent Expert observed in the same communicate that the ‘Government is adopting a model of regulation where government agencies and private companies, rather than judicial authorities, effectively would become the arbiters of lawful expression. I am also concerned that the consultation process would not have involved a sufficiently broad diversity of relevant stakeholders.’¹⁶⁴

4.3 Existing Laws, Policies, And Mechanisms to Challenge or Mitigate the Implications of Repressive Measures Introduced During the Pandemic

Independence of judiciary in Bangladesh

In Bangladesh, the President has the constitutional authority to appoint the Chief Justice (CJ) in consultation with the Prime Minister¹⁶⁵. The process of appointing the CJ has been overwhelmingly politicised and there has been political interference in the judiciary. A former CJ, Surendra Kumar Sinha, was forced to leave the country and the position of the CJ for disagreeing to overturn a judgement on impeachment of judges in parliament¹⁶⁶. A Sessions Court Judge, Md. Motahar Hossain, who acquitted the country’s main opposition political leader, Tarique Rahman, in a case, had to flee the country as he was facing death threats¹⁶⁷. Judge Hossain shared CCTV footage of higher officials who came to his residence while threatening him with death, and insisted he convict the opposition leader¹⁶⁸. These harrowing examples have deeply intimidated

the statutory institutions including the judges and investigators of Bangladesh, and deeply impacted independence of judiciary.

As a result, in the current context of the subjugated nature of the judiciary, securing judicial remedy is extremely subjective, particularly if the justice-seekers are the dissidents. Active adherence to the Universal Declaration of Human Rights (UDHR) and the International Bill of Rights can guide a state like Bangladesh to safeguard the rights of the people¹⁶⁹. Bangladesh’s accession to, and ratification to, the international human rights instruments followed by effective legislative, administrative and judicial actions could have been a game changer in upholding human rights.

International human rights instruments and its adherence

Bangladesh is a party to 11 major international treaties including the International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic, Social, and Cultural Rights (ICESCR), International Convention Against Torture, or Other Cruel and Degrading Treatment or Punishment (CAT), Rome Statute of the International Criminal Court, Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), International Convention on the Elimination of All Forms of Racial Discrimination (CERD), International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW), and Convention on the Rights of the Child (CRC)¹⁷⁰.

¹⁶⁴ Ibid.

¹⁶⁵ Laws of Bangladesh, “Article 48 (3) of the Constitution of Bangladesh”, Accessed June 27, 2023, <<http://bdlaws.minlaw.gov.bd/act-367/section-24597.html>>

¹⁶⁶ Al Jazeera, “Bangladesh Sentences Former Chief Justice To 11 Years in Jail”, November 10, 2021, <<https://www.aljazeera.com/news/2021/11/10/bangladesh-sentences-former-chief-justice-jail-corruption>>

¹⁶⁷ Dhaka Tribune, “ACC Sues Former Judge Who Acquitted Tarique Rahman”, June 22, 2022, <<https://www.dhakatribune.com/bangladesh/2022/06/12/acc-sues-former-judge-who-acquitted-tarique-rahman>>

¹⁶⁸ Just News BD, “Judge Faced Death Threat for Not Convicting Opposition Leader Tarique Rahman”, October 31, 2018, <<https://www.justnewsbd.com/en/special-report/news/3750>>

¹⁶⁹ OHCHR, “International Bill of Rights”, Accessed June 27, 2023, <https://www.ohchr.org/en/what-are-human-rights/international-bill-human-rights>>

¹⁷⁰ OHCHR, “United Nations Human Rights Treaty Bodies Database”, Accessed June 27, 2023 <https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=14&Lang=EN>

Apart from the constitutional obligations, as a State Party to the international treaties, Bangladesh has undeniable obligation to abide by the universally recognised norms and standards of human rights without any discrimination. But, the government of Bangladesh highly disregards its international obligations to uphold the rights enshrined in the international instruments as it ignores the constitutional obligations to protect the rights of the citizens.

Universal Periodic Review

Bangladesh has been participating in the Universal Periodic Review (UPR) of the United Nations Human Rights Council ever since the UPR process was introduced in 2006¹⁷¹. It has, however, accepted the recommendations of its choices and declined to act upon the key recommendations such as ending the practice of enforced disappearances and extrajudicial killings, not to use torture along with arbitrary detention and coercion, as evident in the Joint Civil Society Report on Mid-Term Assessment of Implementation during the UPR 3rd Cycle¹⁷².

Bangladesh has enormous opportunities to leverage in building institutions equipped with transparent systems of accountability for promoting and protecting human rights. This can be achieved by aligning with international instruments and meeting the domestic aspirations of the people. The human rights treaties, the international jurisprudence on human rights, and the recommendations of the UN human rights mechanisms can be the guiding principles for Bangladesh to reform repressive laws and restructure domestic institutions. Strong political will with a determined plan of actions, can help Bangladesh transform the country from a highly repressive one to a human rights-friendly State.

4.4 Initiatives, Good Practices, and Success Stories

- **Civil Society Resistance to Repressive Measures During the Pandemic**

Documenting human rights violations, advocating for the promotion and protection of rights, and cooperating with the UN Human Rights bodies are considered to be ‘anti-state activities’ in the eyes of the government in Bangladesh¹⁷³. Multiple reprisals against human rights organisations including Odhikar— an independent organisation, having Special Consultative status of the Economic and Social Council (ECOSOC) of the UN—represent the situation of civic space in Bangladesh.

The government continues criminalising human rights group’s documentation on arbitrary deprivation of life through unabated enforced disappearances, extrajudicial killings, and custodial deaths due to torture. The authorities have registered trumped up charges against prominent human rights advocate Adilur Rahman Khan, a Supreme Court lawyer and Secretary of Odhikar, and A. S. M. Nasiruddin Elan, Director of Odhikar. Odhikar conducted fact-finding missions on alleged extrajudicial killings of 61 people in an overnight joint operation by the law-enforcement and security forces on 5 and 6 May 2013. Since then, the government launched a series of reprisals against Odhikar and its leadership.

Apart from hate-campaigns and spreading disinformation about Odhikar, the reprisal began with the abduction of Odhikar’s Secretary Adilur Rahman Khan on August 10, 2013, by plain clothed officers of the Detective Branch (DB) of Police. Adilur’s whereabouts were unknown for about 10 hours as the government denied having him

171 OHCHR, “Universal Periodic Review – Bangladesh”, Accessed June 27, 2023 <<https://www.ohchr.org/en/hr-bodies/upr/bd-index>>

172 Joint Civil Society Report on Mid-Term Assessment of Implementation During the UPR 3rd Cycle, December 2, 2020, Human Rights in Bangladesh <https://www.ohchr.org/sites/default/files/Documents/HRBodies/UPR/NGOsMidTermReports/JointSubmissionSolidarityGroup_Bangladesh.pdf>

173 Bangladesh Government’s Official Response to a Joint Urgent Appeal of Eight Special Procedures Mandates, Page 6, May 12, 2022, <<https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=36948>>

arrested and detained. The police, later, produced him before a Court to detain him in prison. Adilur was imprisoned for 62 days. A. S. M. Nasiruddin Elan was also detained in prison for 25 days as he surrendered before the Court. Since then, the government blocked foreign funding to Odhikar and froze its bank accounts. The government used the institutions such as the National Bureau Revenue (NBR), Anti-Corruption Commission (ACC), and NGO Affairs Bureau (NGO-AB) to harass Odhikar and its leaderships in the guise of investigation.

Years after investigation, the NGR and ACC could not substantiate anything against Odhikar. Finally, the NGO-AB, which operates under the Prime Minister's Office (PMO), in June 2022, de-registered Odhikar as a Non-Governmental Organisation (NGO). The decision of de-registration was taken defying a pending case at the High Court regarding the registration. The PMO has also rejected Odhikar's appeal while the judiciary did not provide any effective remedy in the case of registration of the human rights group¹⁷⁴.

The government is using the country's judiciary against Odhikar and its leadership. Two top leaders of Odhikar have been facing expedited prosecution at the Cyber Tribunal of Dhaka. The prosecution is highly flawed as the Cyber Tribunal disregards the norms of fair trials. It failed to ensure the right to fair trial of the two human rights defenders¹⁷⁵. If convicted the human rights defenders will be imprisoned with 5 to 10 years' jail term.

A group of families of the victims of enforced disappearances have formed an association named Maayer Daak (meaning Mother's Call), raising the demands for returning their disappeared loved ones and holding the perpetrators accountable for crimes against humanity. The members of Maayer Daak took to the streets to raise their voice against the pattern of enforced disappearances occurring with blanket impunity, without access to justice for the victims¹⁷⁶.

International and regional human rights groups regularly documented cases and published special reports on human rights situation of Bangladesh. The country's government kept denouncing reports of the international and regional human rights organisations who continuously raised their voice about human rights. The United States Senate Foreign Relations Committee issued a Bipartisan Letter to the Secretary of State on October 27, 2020 requesting the then Secretary of State to impose a sanction on the Rapid Action Battalion (RAB) for extrajudicial killings, enforced disappearance, and torture¹⁷⁷.

On August 31, 2021, the United States Congressional Tom Lantos Human Rights Commission hosted a briefing on enforced disappearance in Bangladesh, where rights activists and the members of the Commission argued for imposing sanctions on the perpetrators of gross human rights violations in Bangladesh¹⁷⁸.

174 The Researcher's interview with Odhikar's leaderships about reprisals

175 Odhikar, "BANGLADESH: Annual Human Rights Report 2022", Page 53, Accessed June 27, 2023 <<https://odhikar.org/bangladesh-annual-human-rights-report-2022-2/>>

176 Asian Legal Resource Centre, "BANGLADESH: Enforced Disappearances Must Warrant Consequences", September 13, 2021, <<https://alrc.asia/bangladesh-enforced-disappearances-must-warrant-consequences/>>

177 United States Senate Foreign Relations Committee, "Bipartisan Letter Calls for Sanctions on Bangladeshi Battalion for Extrajudicial Killings, Enforced Disappearances, Torture", October 27, 2020, <<https://tinyurl.com/hvxdkfr>>

178 Tom Lantos, "Enforced Disappearance in Bangladesh", Human Rights Commission of the United States Congress, August 31, 2021, <<https://humanrightscommission.house.gov/events/hearings/enforced-disappearance-bangladesh>>

On December 10, 2021, the Department of Treasury of the United States designated sanctions on the Rapid Action Battalion and six of its top commanders¹⁷⁹. On the same date, December 10, 2021, the United States' Department of State imposed a visa ban on Benazir Ahmed, Inspector General of the Bangladesh Police and former Director General of RAB, and Miftah Uddin Ahmed, Lieutenant Colonel and former commanding officer of RAB Unit 7¹⁸⁰.

The sanctions on the RAB and its six top commanders, had significant impact in Bangladesh. Law-enforcement agencies and security forces halted extrajudicial killings for several months, as an immediate impact of the sanctions. Yet, gross violations such as enforced disappearances, torture and arbitrary detention did not stop¹⁸¹.

These gross human rights violations continued with impunity¹⁸². The government of Bangladesh publicly expressed their frustrations by blaming the US for providing training and weapons to RAB¹⁸³, and demanded for withdrawal of sanction¹⁸⁴. Simultaneously, the government kept blaming human rights groups such as Odhikar for the US sanction on RAB, and intensified reprisals and smeared hate-campaigns¹⁸⁵.

The victims, and the human rights activists welcomed the sanctions. They were inspired to see that their voices were heard, and their efforts can make significant differences. They rejuvenated their inspirations and became optimistic that the perpetrators may face accountability someday for

the gross human rights violations in Bangladesh¹⁸⁶. Sanctions against perpetrators of gross human rights violations under authoritarian regimes are considered to be one of most effective mechanisms outside the multilateral bodies of the world.

5. Key Findings

Bangladesh, like all other countries of the world, had no way to stop a global pandemic like the COVID-19 outbreak, entering into its territory. The people needed the healthcare system to have the ability to provide fair access to medical treatment. The government was required to demonstrate that its policies, directions, and decisions regarding addressing the pandemic-related services were equitable and affordable for everyone.

The government curbed civic space during the pandemic and launched a crackdown on political opposition parties, to deny their freedom of peaceful assembly and association. It used regular law-enforcement agencies and security forces and ruling party affiliates against the dissenters to unleash physical attacks.

The government made the pandemic an excuse to muzzle the freedom of the press by detaining a number of journalists from the mainstream media. The authorities were extremely intolerant to criticisms in social media. Hundreds of people were arbitrarily detained under the draconian Digital Security Act (DSA), the Special Powers Act (SPA), the Anti-Terrorism Act (ATA), and the Official Secrets Act apart from the regular penal laws.

179 United States Department of Treasury, "Treasury Sanctions Perpetrators of Serious Human Rights Abuse on International Human Rights Day", December 10, 2021, <<https://home.treasury.gov/news/press-releases/jy0526>>

180 United States Department of State, "The United States Promotes Accountability for Human Rights Violations and Abuses", December 10, 2021, <<https://www.state.gov/the-united-states-promotes-accountability-for-human-rights-violations-and-abuses/>>

181 CIVICUS, "Despite Sanctions, Abuses Against Activists, Journalists and Protesters Persist in Bangladesh", March 2, 2022, <<https://tinyurl.com/a28eed3f>>

182 Voice of America, "Bangladesh Accused of Rewarding Alleged Rights Abusers", October 22, 2022, <<https://www.voanews.com/a/bangladesh-accused-of-rewarding-alleged-rights-abusers/6781614.html>>

183 The Daily Star, "It Was the US That Trained Rab: Foreign Minister", January 21, 2022, <<https://www.thedailystar.net/news/bangladesh/diplomacy/news/it-was-the-us-trained-rab-foreign-minister-2944206>>

184 The Daily Star, "Bangladesh Demands US Withdraw Rab Sanctions Citing 'No Deaths in Last 3 Months'", March 23, 2022, <<https://tinyurl.com/2s3kxphb>>

185 CIVICUS and Asian Human Rights Commission, "BANGLADESH: Arbitrary De-Registration of Prominent Human Rights Group Odhikar Another Blow to Civil Society", June 13, 2022, <<https://tinyurl.com/49p6nt7n>>

186 Rahman, S., "Rights Activists Welcome US Sanctions on Bangladesh's Elite Paramilitary Force", Voice of America, December 16, 2021, <<https://www.voanews.com/a/rights-activists-welcome-us-sanctions-on-paramilitary-unit-despite-bangladesh-s-rejection-/6357236.html>>

Members of the civil society and critics of the government were also targeted for reprisals. The violations of human rights were not limited to curbing civic space. Gross violations of human rights including enforced disappearances, extrajudicial killings, and torture continued in a large scale with blanket impunity. The victims were extremely

defenseless in the given situation. The judiciary was subjugated to such an extent that it repeatedly denied bails to the detainees for months leading to the death of a writer in prison. The victims simply do not have a fair access to justice in the country's domestic jurisdiction.

6. Recommendations

A. To the State of Bangladesh:

1. Ensure that the upcoming national election is free, fair, participatory, and inclusive.
2. Urgent steps need to be devised for preventing human rights violations through the reconstruction and transformation of judicial institutions into effective, independent ones, that hold perpetrators fully accountable for the gross violations of human rights.
3. The government's interference with constitutional and state institutions must be prevented. The institutions protecting rule of law and other governmental bodies must act professionally without any interference, discrimination, and preference in upholding justice.
4. Political violence and criminalisation of the dissenters must end.
5. Members of the law enforcement agencies—who are involved in human rights violations, including extrajudicial killings, enforced disappearances, torture and inhumane treatment—must no longer enjoy impunity. They must be brought to justice and punished as per law of the land.
6. Law enforcement agencies and security forces should adhere to the Basic Principles on the use of Force and Firearms by Law Enforcement Officials and the UN Code of Conduct for Law Enforcement Officials.
7. The Torture and Custodial Death (Prevention) Act, 2013 must be implemented effectively and the High Court and Appellate Division directives must be followed to control and prevent violations. The government must also ratify the Optional Protocol to the Convention against Torture.

8. The government must accede to the International Convention for the Protection of All Persons from Enforced Disappearance, recognize the competence of the UN Committee Against Enforced Disappearances and criminalize enforced disappearance by bringing it under domestic law.
9. The government must respect the rights to freedom of assembly and association guaranteed in the Constitution. Harassment on the leaders and activists of the opposition political parties and dissenters should end.
10. Interference with freedoms of expression and the media must be prohibited. All false cases filed against journalists and human rights defenders should be withdrawn and incidents of attacks on them must be properly investigated and those responsible be brought to justice.
11. All repressive laws that restrict fundamental freedoms, including the Special Powers Act, 1974, the Information and Communication Technology Act, 2006, Anti-Terrorism Act, 2009 and the Digital Security Act, 2018 should be repealed or amended as per international human rights standards.
12. Citizens belonging to linguistic, ethnic, religious and all other minority communities, must be protected and the State, and the government must take non-discriminatory measures to ensure their full rights.
13. The ongoing State repression, surveillance and harassment on civil society organisations, especially human rights organisations and human rights defenders, must cease.

INDIA: TARGETED USE OF FOREIGN CONTRIBUTION REGULATION ACT (FCRA) AGAINST CIVIL SOCIETY ORGANISATIONS

AUTHOR: SHRUTIKA PANDEY

1. Foreign Funding Restrictions on Indian Non-Governmental Organisations: An Introduction

The human rights movement in India predates its independence from British colonial rule which ended in 1947. In post-colonial India, loose coalitions and movements addressed many issues and identity-based concerns, ranging from environment, human rights, women's rights, and election monitoring among others. It created a civic space to cherish the values of democracy and accountability response to the State's excesses. These values were strengthened by including fundamental rights and freedoms in the newly drafted Constitution adopted in 1950.

A civic space not only facilitates the pursuit of democracy but also enhances citizen participation, good governance, and human rights. However, this civic space has shrunk globally, especially with the upsurge in right-wing politics and extremism — creating an atmosphere of intolerance, attacks

against and discrimination of minorities and immigrants, ethnic violence, and curtailment of fundamental rights and freedoms. India is no exception to this situation.

The Hindu nationalist Bharatiya Janata Party (BJP) — shortly after coming to power in 2014 — commenced sustained attacks on a historically vibrant civil society.¹ The present regime's increasingly authoritarian tendencies had grave implications on the fundamental freedoms of association and peaceful assembly, speech and expression, and the rule of law. Amidst other repressive measures, anti-non-governmental organisations laws, targeted raids, harassment, and arbitrary criminalisation have structurally shrunk the civic space in India. These factors contributed to India's position dropping from 106th (2014) to 119th (2021) on the Human Freedom Index.²

One of the factors that sustain the engagement of civil societies and their ability to carry out human rights work is access to resources, including

1 The South Asia Collective. (2020, December 21). The erosion of civic space in South Asia. The Caravan. Retrieved February 6, 2023, from <https://caravanmagazine.in/politics/the-erosion-of-civic-space-in-south-asia-minorities-report-2020>

2 Rampal, Nikhil. "Slipping since 2014, India Ranks 119 out of 165 in Human Freedom Index by US-Canada Think Tanks." ThePrint, December 17, 2021. <https://theprint.in/india/slipping-since-2014-india-ranks-119-out-of-165-in-human-freedom-index-by-us-canada-think-tanks/783387/>.

domestic and international funding. In response, countries have measured a dramatic rise in laws and policies restricting foreign funding to civil society organisations.³

In 1976, India began closely monitoring the ties between civil society and international funding by legislating the Foreign Contribution (Regulation) Act (FCRA). This law was primarily passed to curb activities financed through foreign contributions for being 'detrimental to the national interest.'⁴ Since then, the legal framework regulating foreign aid in India has been expanded through various amendments to the FCRA.⁵ These initiatives are, however, often criticised for using broad and vague language, and are also used for restricting legitimate activities that challenge State majoritarianism.⁶

1.1. Impact of COVID-19

At least 44 countries enacted COVID-19 measures that directly affected the right to freedom of expression, and 124 countries passed measures affecting the right to freedom of peaceful assembly, often through the imposition of emergency decrees.⁷

The COVID-19 pandemic and the ensuing lockdown had adversely affected people's lives, particularly the marginalised sections of the population with loss of livelihoods, food shortages, and disruptions in access to health services and education.⁸ Other than a public health crisis, COVID-19 also saw governments globally exercising a clampdown on fundamental freedoms and imposing restrictions on civil society.

In India, the government restricted physical mobility by exercising wide, excessive, and arbitrary use of police in implementing the curfew. Additionally, several small and grassroots organisations reported having faced a severe blow to their ongoing and upcoming projects due to FCRA changes in 2021, which restricted the sub-granting of funds.⁹ Six weeks after the first COVID-19 case was reported in India in January 2020, the government declared a pandemic and imposed the colonial-era Epidemic Diseases Act, 1897.¹⁰

The country then witnessed an unprecedented nationwide lockdown that restricted movement and completely halted business travel as well as social and political gatherings. Thus, apart from the apparent health crisis, the COVID-19 pandemic also brought severe social, economic, and humanitarian concerns for many, especially those belonging to socially, culturally, and economically vulnerable and marginalised communities.

However, despite these increasing difficulties, it was civil society organisations (CSOs) who took swift action to respond to the public health crisis. They undertook immediate relief work in addition to their regular work. This additional responsibility, accompanied by the shifting national and international funding priorities, made it difficult for CSOs to continue their job effectively.

Another hurdle brought forth by the BJP government during the peak of the pandemic in September 2020¹¹ were the amendments to the Foreign Contribution Regulation Act. These amendments tightened

3 Bromley, P., Schofer, E., & Longhofer, W. (2019). Contentions over World Culture: The Rise of Legal Restrictions on Foreign Funding to NGOs, 1994–2015. *Social Forces*, Volume 99(1), 281–304. <https://doi.org/10.1093/sf/soz138>

4 [Foreign Contribution Regulation Act, 1976](#)

5 The FCRA, 1976 was amended in 1984. Later, the FCRA, 1976 was replaced by FCRA, 2010, amended in 2019, 2020 and 2022.

6 Sampath, G. "Are the Provisions of the FCRA Loaded against Civil Society?: In Focus." Return to frontpage. *The Hindu*, January 15, 2022. <https://www.thehindu.com/podcast/are-the-provisions-of-the-fcra-loaded-against-civil-society-in-focus/article38274177.ece>.

7 "Covid-19 Civic Freedom Tracker." ICNL. Accessed November 14, 2022. <https://www.icnl.org/covid19tracker/?location=&issue=9&date=&type=>

8 UNICEF. Rep. On the Socio-Economic Situation of Vulnerable Populations through Community-Based Monitoring. UNICEF, n.d. <https://www.unicef.org/india/reports/assessing-impact-covid-19-pandemic>.

9 Lobo, Joselyn T. "FCRA Changes Hindering NGOs' Covid Relief Works." *Deccan Herald*. DH News Service, July 30, 2021. <https://www.deccanherald.com/opinion/panorama/fcra-changes-hindering-ngos-covid-relief-works-1014443.html>.

10 The Epidemic Diseases Act, 1897

11 https://fcrionline.nic.in/home/PDF_Doc/fc_amend_07102020_1.pdf

the State's hold on foreign funding received by NGOs through the imposition of foreign funding restrictions, burdensome registration processes, and harassment of civil society members. The health emergency allowed the Indian State to use special laws and administrative orders, augmenting the Executive's power and drastically pared down fundamental freedoms, leading to pervasive democratic backsliding.¹²

1.2. The rationale for the research

This study will present a brief analysis of the FCRA legislation—before and after the latest amendment in 2020—including the examination of judicial pronouncements made by the Supreme Court of India. It will analyse the law textually and thematically to look at the increased repression of civil society organisations vis-à-vis: (a) freedom of speech and expression as well as (b) freedom of peaceful assembly and association. The report will then map, investigate, and record the disproportionate impacts that the CSOs and human rights defenders suffered from the restrictive law and tightened State control in the COVID-19 context. By highlighting these two essential aspects, the report purports to show a systematic targeting of CSOs through the FCRA and its increased risks during the pandemic that incapacitated their ability to work towards relief measures.

2. Overview of the Human Rights Situation in India

Despite the tall claim of being the world's largest

democracy, fundamental freedoms and human rights have increasingly been under threat within the country. India has, in fact, regressed from 'free' to 'partly free' in the Freedom in the World 2021 report.¹³

The downgrade can be attributed to rising violence and discriminatory policies affecting the freedom of speech, expression, peaceful assembly, and associations, especially for minorities including the marginalised and vulnerable communities.¹⁴ Having scored 4.6 out of 10, India performed worse than average in providing social and economic rights vis-à-vis other South Asian countries as per the Human Rights Measurement Initiative (HRMI).¹⁵

A series of events under the tenure of the Bhartiya Janata Party since 2019 can be attributed to anti-democratic measures against cherished constitutional values. For instance, in 2019, the government revoked the special status of Jammu & Kashmir by abrogating Article 370 of the Indian Constitution that provided autonomy to said states. Because of which, a strict military lockdown was imposed, resulting in grave human rights violations—arbitrary arrests and detentions—prohibition of public assembly, etc.¹⁶

In the same year, the controversial and discriminatory Citizenship Amendment Act (CAA) was passed, which aimed to provide a path to citizenship to all religions from persecuted countries, except for Muslims.¹⁷ However, the exclusion of a minority religious community was severely criticised nationally and internationally.¹⁸ A spate of nationwide

12 Vaishnav, Milan (2021, December 7). The Challenge of India's Democratic backsliding. Democracy Journal. Retrieved November 20, 2022, from <https://democracyjournal.org/magazine/62-special-issue/the-challenge-of-indias-democratic-backsliding/>

13 Repucci, S., & Slipowitz, Amy. (n.d.). Democracy under siege. Freedom House. Retrieved November 18, 2022, from <https://freedomhouse.org/report/freedom-world/2021/democracy-under-siege>

14 "India: Freedom in the World 2021 Country Report." Freedom House. Accessed February 6, 2023. <https://freedomhouse.org/country/india/freedom-world/2021>.

15 Human Rights Measurement Index Tracker, India at a glance, Available at <https://rightstracker.org/en/country/IND?tab=snapshot>

16 Fahin, N. (2019, November 24). Kashmir Militarisation and Discontent: Revoking Article 370. Kashmir Militarisation and Discontent: Revoking Article 370: Leeds Human Rights Journal. Retrieved November 18, 2022, from <https://hrj.leeds.ac.uk/2019/11/24/kashmir-militarisation-and-discontent-revoking-of-article-370/>

17 BBC. (2019, December 11). Citizenship Amendment Bill: India's new 'anti-Muslim' law explained. BBC News. Retrieved November 18, 2022, from <https://www.bbc.com/news/world-asia-india-50670393>

18 Lakshman, Sriram. "Citizenship Amendment Act Will Cause Muslims to Face Exclusion: U.S. Panel on Religions." The Hindu, February 20, 2020. <https://www.thehindu.com/news/national/caa-will-adversely-impact-muslims-in-india-says-uscirf/article30868490.ece>.

protests followed, responded by the imposition of blatant restrictions, including arbitrary detentions, false charges, and custodial torture of protestors, opposition leaders, and human rights defenders.

2.1. Human Rights in India and COVID-19

The impact of COVID-19 did not limit itself to being a public health crisis. It resulted in grave human rights violations and restrictions such as the right to life, privacy, access to information, and education, which disproportionately affected migrant laborers, women, children, prisoners, and sexual and religious minorities.

The unprecedented nationwide lockdown imposed with a mere four-hour notice¹⁹ and other policy responses to curb the virus has only resulted in a range of unlawful, unnecessary, and disproportionate restrictions on people's rights and liberties. It also underlined the existing fault lines of communal 'othering' and stigmatising religious minorities in the country.

By the second COVID-19 wave, India witnessed an unprecedented crisis in the form of shortages of hospital bed, oxygen cylinders, and funerals.²⁰ However, instead of focusing on improving healthcare facilities and creating an enabling environment, the government directed its efforts on stifling criticism using draconian laws.²¹ For instance, despite the Supreme Court's direction on the de-congestion of prisons and several appeals by the next of kin, human rights defenders (HRDs) and rights activists were

forced to stay in jails amidst crippling infrastructure and a lack of medical services.²² But among cases of several HRDs being exposed to the COVID-19 virus, the in-custody death of Fr. Stan Swamy drew global condemnation. His health condition deteriorated in prison²³ and he was refused bail despite many requests. Mary Lawlor, the UN Special Rapporteur on human rights defenders, remarked his death in custody 'will forever remain a stain on India's human rights record.'²⁴

3. A Brief Snapshot of the Foreign Contribution Laws in India

The State regulations vis-a-vis foreign funding fuels the already contested relations between the government and civil society. The first of these measures was enacted as early as 1976 through the FCRA, which regulated the funds received by organisations in India from overseas.

The Act was later amended in 1984 and then in 1991, remaining in force till 2010, when it was further amended in 2010 and 2019, whereby more restrictive provisions on CSOs were introduced.

3.1. History and Legislative Intention

First, a bill to regulate foreign funding named 'Foreign Contribution Regulation Bill' was introduced in 1973 right before the constitutional emergency was declared in 1975.²⁵ In 1976, the Foreign Contribution Regulation Act was passed by both houses of the parliament.

19 Gettleman, J., & Schultz, K. (2020, March 24). Modi orders 3-week total lockdown for all 1.3 billion Indians. *The New York Times*. Retrieved November 18, 2022, from <https://www.nytimes.com/2020/03/24/world/asia/india-coronavirus-lockdown.html>

20 "Arundhati Roy on India's Covid Catastrophe: 'We Are Witnessing a Crime against Humanity'." *The Guardian*. Guardian News and Media, April 28, 2021. <https://www.theguardian.com/news/2021/apr/28/crime-against-humanity-arundhati-roy-india-covid-catastrophe>.

21 For instance, the Uttar Pradesh government, led by BJP leader Yogi Adityanath, pressed criminal charges against citizens and journalists who reported the authorities' mismanagement of oxygen supply in hospitals. And despite the evidence, the UP-state government repeatedly maintained that there was no shortage of oxygen and threatened to take action under the National Security Act. The Gangsters Act against 'anti-social elements' for 'spreading rumours'.

22 Staff Reporter., (2021, May 12). Bhima Koregaon: Release activists were given Covid situation, their families, tell Maharashtra CM. Scroll. in. Retrieved November 18, 2022, from <https://scroll.in/latest/994770/bhima-koregaon-release-activists-in-view-of-covid-situation-their-families-tell-maharashtra-cm>

23 Jaisinghani, B. (2021, July 5). Stan Swamy's death draws worldwide condemnation: India News - Times of India. *The Times of India*. Retrieved February 15, 2023, from <https://timesofindia.indiatimes.com/india/stan-swamys-death-draws-worldwide-condemnation/articleshow/84146182.cms>

24 United Nations Human Rights Office of The High Commissioner. "India: Death in custody of priest Stan Swamy is devastating". (2021, July 15). Retrieved November 18, 2022, from <https://www.ohchr.org/en/press-releases/2021/07/india-death-custody-priest-stan-swamy-devastating-un-expert>

25 Bhatt, P. (D. P. I. (n.d.). Balancing transnational charity with democratic order, security, social harmony and accountability: A critical appraisal of the foreign contribution (regulation) Act, 2010. essay.

The objective of the law was to prohibit political parties and organisations that entailed a political nature from receiving foreign contributions or grants. But beyond that, its ambit also covered funding received by civil servants, judges, journalists, columnists and cartoonists, and editors, owners of registered newspapers and news broadcasting organisations.²⁶

The Supreme Court, however—in challenge to the law—did declare that the FCRA, 1976 was enacted to shield the ‘legislative armory’ and ‘insulate the sensitive areas of national life like journalism, judiciary, and politics from extraneous influences stemming from beyond our borders.’²⁷

A look into the legislative history of the statute would require a deep dive into the socio-political and economic context of that time. A qualitative analysis of the then Lok Sabha debates established that the fear psychosis regarding the political destabilisation of the country by foreign agencies through foreign funding was the major operative force in the enactment of the law.²⁸

In 1984, a Commission of Enquiry was set up to investigate the misuse of funds and activities of foreign-funded NGOs.²⁹ It is said to be the then Prime Minister Indira Gandhi’s response to the role played by NGOs in facilitating political mobilisation during the emergency period which witnessed the suspension of fundamental rights and widespread violations of rights and liberties.³⁰

It is believed that the recommendations of this Commission shaped the 1984 amendments to the

FCRA of 1976. These amendments allowed the definition of political organisations—barred from receiving foreign funds—to apply even to voluntary organisations. It also made registering not-for-profit organisations mandatory for the central government to continue accepting foreign donations.

As a result, the government had greater control over such organisations, providing them with the power to inspect audited accounts. Nonetheless, these changes shifted the focus of the law from political parties to non-profits and non-governmental organisations.

3.2. Key Provisions of FCRA and its Amendment

The three critical areas of regulation proposed by the FCRA, 1976 pertained to (a) prohibition on acceptance of foreign contributions; (b) prior permission of the Central Government to obtain foreign funds, and (c) legal compliance to receive foreign contributions.³¹ The original law made space for genuine foreign contributions for non-political purposes. However, the primary objective remained regulation and not facilitation, which, at best, was a fallout.

While the amendments made in 1984 did bring voluntary organisations under the FCRA’s scope, it also provided the central government with the immense power to prosecute organisations in case of misuse of foreign contributions. However, a 2001 report released by the Group of Ministers on reforming the National Security System proposed another change to the FCRA 1976, which made a case for having much closer control over the recipients of

26 Section 4 of FCRA Act, 1976

27 Association for *Democratic Reforms v. Union of India*, 1982 AIR 1473, 1983 SCR (1) 456

28 Supra Note 20

29 It was headed by Justice P.D. Kudal.

30 Ramakrishnant, V., & Rajalakshmi, K., (2018, April 23). Targetting NGOs. Retrieved November 20, 2022, from <https://frontline.thehindu.com/cover-story/targetting-ngos/article6141097.ece>

31 Section 6 imposes a set of legal compliances for ‘any cultural, economic, educational, religious or social program’ to receive foreign contributions. They must register themselves, agree to accept the amount in a specified bank account, and inform the government about the receipt, intended purpose, and utilisation of these funds. A failure to comply would result in a ban on the said organisation/association, which then will not be able to receive any funds without the government’s consent.

foreign contributions by shifting the monitoring to district-level for a 100 per cent check.³²

In the amendment to FCRA in 2010, the government's focus shifted from the original idea of regulating electoral and political processes to regulate and control non-governmental organisations. This became more than evident through the changes in the long title and preamble.³³ The earlier stance to use FCRA to restrict and regulate political process expanded to include 'any activities detrimental to the national interest.'³⁴

3.3. FCRA Amendment, 2020 and COVID-19: A Double Crisis for Indian CSOs:

Another effort to amend the FCRA was made in 2019. As per the Indian government, the introduction of the amendments was to 'ensure that foreign funds do not dominate the political and social discourse in India.'³⁵

These changes included:

- Expansion of the list of persons prohibited from receiving foreign contributions by adding 'public servants' to it;
- Decrease on the cap on administrative expenses from the earlier 50 per cent to 20 per cent;

- Prohibiting the transfer of foreign funds from a registered entity to any other person.³⁶

In addition, the foreign contributions were now to be routed through a single bank— the State Bank of India's branch in New Delhi, the national capital.³⁷ However, during the pandemic where movement was severely restricted—the onerous compliance of this mandate challenged NGOs with a cash crunch, hurdling their ongoing relief work.³⁸

These amendments along with the strict and complicated procedural compliance made it virtually impossible for NGOs to function in India.³⁹ It in fact, disproportionately and adversely impacted the smaller CSOs, which were either forced to downsize or completely shut down projects.⁴⁰

Pertinently, the role of these very CSOs in COVID-relief remained extremely crucial given their access to tribal and remote regions combined with their capacity to do the last leg-work to ensure that relief reaches the needy.⁴¹ And at a time when the focus should have completely been on relief work, the compliance requirements kept the NGOs busy with their operations now ranging from changing bank accounts to obtaining renewals.⁴²

32 Press Information Bureau. (2001, May 23). "Group Of Ministers' Report On "Reforming The National Security System". Retrieved November 20, 2022, from <https://archive.pib.gov.in/archive/releases98/lyr2001/rmay2001/23052001/r23052001110.html>

33 One of the major shifts was in the long title itself; whereas the 1976 Act stated "An Act to regulate...in a manner consistent with the values of a sovereign democratic republic...", the current Act of 2010 states "An Act to consolidate...for any activities detrimental to the national interest.."

34 Preamble to Foreign Contribution Regulation Act, 2010

35 While introducing the bill on the floor of the house, the Minister of State (MoS) Home Affairs, noted that it was a law for national and internal security that was aimed to ensure that foreign funds do not dominate the political and social discourse in India'.

36 Amended Section 7 of the FCR Amendment Act, 2020.

37 Amended Section 17 of the FCRA, 2010

38 Ghosh, S. (2021, May 18). *New FCRA rules choking NGO funding, Stalls Covid Relief Work*. The Economic Times. Retrieved November 20, 2022, from <https://economictimes.indiatimes.com/news/india/new-fcra-rules-choking-ngo-funding-stalls-covid-relief-work/articleshow/82725394.cms?from=mdr>

39 Dhawan, H. (2020, October 4). "FCRA law could dry up money for less popular causes, shut small NGOs down, says Ingrid Srinath" - Times of India. The Times of India. Retrieved November 20, 2022, from <https://timesofindia.indiatimes.com/home/sunday-times/all-that-matters/fcra-law-could-dry-up-money-for-less-popular-causes-shut-small-ngos-down-says-ingrid-srinath/articleshow/78467325.cms>

40 Ghosh, S. (2021, May 18). "New FCRA rules choking NGO funding, Stalls Covid Relief Work." - The Economic Times. Retrieved November 20, 2022, from <https://economictimes.indiatimes.com/news/india/new-fcra-rules-choking-ngo-funding-stalls-covid-relief-work/articleshow/82725394.cms?from=mdr>

41 Lobo, J. T. (2021, July 29). "FRCA changes hindering NGOs' Covid relief works." Deccan Herald. Retrieved November 20, 2022, from <https://www.deccanherald.com/opinion/panorama/frca-changes-hindering-ngos-covid-relief-works-1014443.html>

42 In the landmark case of K.S. Puttaswamy v. Union of India (also known as the Aadhar Case), the right to privacy was held as a fundamental right under Article 21 of the Constitution of India.

It also resulted in reduced support from businesses and cross-border donations already impacted by the pandemic, making it more and more difficult for the CSOs to carry out pandemic relief work.⁴³ These changes also broadened the Act's scope to cover all new forms of media, including the Internet. The law also restricted the use of foreign contributions to cover more than 50 per cent of the administrative cost of any organisation.

3.4. Legal challenge against FCRA:

The challenge before the Supreme Court of India:

The civil society viewed the introduction of the amendment made to FCRA in 2019 as a plan to 'kill' the voluntary sector in India. As a result, Noel Harper—the chairman of Care and Share Charitable Trust—challenged the amendments before the Supreme Court, citing violations of Articles 14, 19, and 21⁴⁴ of the Indian Constitution. The three main challenges that were put forth in the petition revolved around: (a) the opening of a specific FCRA account in SBI as unreasonable and arbitrary; (b) the requirement of Aadhar cards for FCRA clearance violating the fundamental right to privacy;⁴⁵ (c) the prohibition on transferring foreign contributions to other persons as ultra vires to the Constitution.

The Court's response to these challenges was, however, half-hearted and was in fact, criticised for being misconstrued and the Court upheld the amendments made to FCRA.⁴⁶ Responding to the issue of furnishing the government issued

identify card, Aadhaar, for registration and license clearance—as mandated in Section 12A of the FCRA Amendment 2020—the Supreme Court read down the provision holding that passports can also be produced as identification documents.⁴⁷ However, no decision was given on the issue of violation of privacy.⁴⁸

And as far as the other two counts were concerned, the Supreme Court dismissed the petition. They upheld that the requirement to open a separate bank account was necessary to strictly regulate the received foreign funds, ensuring transparency and accountability with the bar on transfer⁴⁹ to third parties.

The Supreme Court in fact, discussed the test of 'intelligible differentia' and upheld a rational nexus in the new amendments, stating that foreign aid 'may tend to influence or impose political ideology' and, if need be, must be 'completely eschewed.'⁵⁰ But in doing so, it negated the most basic and vested right of Indian citizens to receive foreign contributions and also expressed that 'It is open to the State to have a regime which may completely prohibit receipt of foreign donation, as no right inheres in the citizen to receive foreign contribution (donation).'⁵¹

Meanwhile, as an impact of amending Section 7 of the FCRA, the Supreme Court noted that the intention was to curb the prevailing misutilisation of foreign contributions. They believed such funds were widely being used for purposes other than that for which they were granted, or for purposes

43 Raghuvanshi, P. (2022, July 1). In FCRA judgment, the Supreme Court misconstrued NGO's legitimate activities as against National Interest – the leaflet. The Leaflet – An independent platform for cutting-edge, progressive, legal, and political opinion. Retrieved November 20, 2022, from <https://theleaflet.in/in-fcra-judgment-the-supreme-court-misconstrued-ngos-legitimate-activities-as-against-national-interest/>

44 Bhatia, G. (2022, April 12). "Comforting the comfortable and afflicting the afflicted: The Supreme Court's FCRA judgment. Indian Constitutional Law and Philosophy." Retrieved November 20, 2022, from <https://indconlawphil.wordpress.com/2022/04/12/comforting-the-comfortable-and-afflicting-the-afflicted-the-supreme-courts-fcra-judgment/>

45 Supra Note

46 Section 7 of the FCR Amendment Act, 2020

47 "Explained: Amendments to FCRA law that the Supreme Court has upheld." The Wire. (2022, April 9). Retrieved November 20, 2022, from <https://thewire.in/law/explained-amendments-to-fcra-law-that-the-supreme-court-has-upheld>

48 "Receiving foreign donations not absolute right, rules SC." The Pioneer. (2022, April 9). Retrieved November 20, 2022, from <https://www.dailypioneer.com/2022/page1/receiving-foreign-donations-not-absolute-right--rules-sc.html>

49 Supra

50 Report of the UN Special Rapporteur on the situation of human rights defenders, A/66/203, 28 July 2011, paragraphs 69 and 71-73

51 United Nations Human Rights Office Of The High Commissioner: "Bachelet dismayed at restrictions on human rights NGOs and arrests of activists in India" (October 2020), Available at <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26398&LangID=E>

other than those that were stated in the certificate awarded as per the Act.⁵²

4. Thematic Critique of FCRA

A restrictive funding regime for NGOs impacts their capacity to carry out their programmes and meet their intended outcomes, impairing their ability to collect, mobilise, express and demand reforms. As evidenced in India, the impact of the FCRA on CSOs has extensively curtailed their liberty and ability to carry on their work in terms of the promotion and protection of human rights within the country.

The FCRA is in fact, used vengefully to silence critics, HRDs, and journalists for transparency and accountability, and individuals with approaches that do not align with the government. In the Report of the Special Rapporteur on human rights defenders, Margaret Sekaggya highlighted that NGOs and defenders should have foreign funds to the 'same extent' as the Government.⁵³

In October 2020, UN High Commissioner for Human Rights Michelle Bachelet issued a statement urging the Government of India to safeguard the rights of HRDs and NGOs, and expressed regret at NGOs' legal constraints.⁵⁴ The United Nations General Assembly echoed this in its Declaration on Human Rights Defenders, which emphasises the right to access resources for work related to promoting and protecting human rights and fundamental freedom applies to HRDs and CSOs.⁵⁵

In 2004, the Secretary-General's Special Representative on the Situation of Human Rights Defenders went a step further to express that governments must allow access to foreign funding as a part of international cooperation, something civil society is entitled to as much as the governments.⁵⁶

Given the attack on civic space, backed by a restrictive legal regime, this section thematically analyses the provisions of the FCRA and its subsequent amendments. It will aim to establish how they conflict with the principles of significant international obligations and India's national legal regime. In doing so, it mainly aims to highlight its contraventions with the right to freedom of opinion and expression, peaceful assembly and association that impair the working of CSOs and HRDs in the country.

4.1. FCRA in comparison with International Law

4.1.1. Freedom of Peaceful Assembly and Association

Article 21 of the International Covenant on Civil and Political Rights (ICCPR) protects the right to peaceful assembly⁵⁷ while Article 22 protects the right to freedom of association. Both Articles acknowledge that reasonable restrictions under the grounds prescribed by law, which have a legitimate aim and are necessary and proportionate are permitted.⁵⁸

52 Declaration on the Rights and Responsibilities of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, U.N. General Assembly, U.N. Doc. G.A. Res. 53/144, 9 December 1998, art. 13 (under this framework, States are supposed to adopt legislation to facilitate and not impede the solicitation, receipt and use of resources.) [hereinafter Declaration on Human Rights Defenders].

53 Special Representative of the Secretary-General on the Situation of Human Rights Defenders, United Nations General Assembly, A/59/401 (2004) at 82(I).

54 UN Doc. A/HRC/RES/22/6 (2013), paras 8 and 9 - Article 21 of the ICCPR protects the right to peaceful assembly, consisting of open debates on public affairs, meetings, rallies, strikes and demonstrations – irrespective of whether it promotes or criticises the government

55 Article 22(2), ICCPR speaks of the reasonability of restriction on freedom of association, noting that (a) it must be prescribed by law; b) have a legitimate aim limited to protecting either “national security”, “public safety”, “public order”, “public health or morals” or the “rights and freedoms of others”, and c) be strictly necessary and proportionate to that aim.

56 According to Maina Kiai, UN Special Rapporteur (UNSR) on the rights to freedom of peaceful assembly and of association, “The right to freedom of association not only includes the ability of individuals or legal entities to form and join an association [End Page 33] but also to seek, receive and use resources—human, material and financial—from domestic, foreign and international sources.”

57 Moose, G. M. L. (1997). Freedom of Association: Its Potential for Human Rights NGOs at Home and Abroad. In Human Rights Quarterly, (4th ed., Vol. 19). essay, Johns Hopkins University Press.61 Bhatnagar, Gaurav V., The Wire. “UN Special Rapporteur Maina Kiai Slams India's FCRA Rules” (October 2020) <https://thewire.in/diplomacy/un-special-rapporteur-maina-kiai-slams-indias-fcra-rules>

58 Bhatnagar, Gaurav V., The Wire. “UN Special Rapporteur Maina Kiai Slams India's FCRA Rules” (October 2020) <https://thewire.in/diplomacy/un-special-rapporteur-maina-kiai-slams-indias-fcra-rules>

The right to freedom of peaceful assembly and association refers to the ability of individuals or legal entities to form and join associations. It also includes the willingness to seek and receive human, material, and financial resources from domestic, foreign and international sources.⁵⁹ Therefore, this right is an indispensable means of safeguarding the work done by CSOs and other HRDs, in preserving individuals' liberties.

After all, the expressive impact achieved through collective means exceeds what each can achieve if acting alone.⁶⁰ The Special Rapporteur on the rights to freedom of peaceful assembly and association has noted that the limits set out in the FCRA 2010 do not comply with international law and standards.⁶¹ This puts CSOs and human rights defenders at the risk of being used by the Indian government to silence any association with political, economic, social, environmental, or cultural priorities different from those espoused by the government.

4.1.2. Freedom of Expression

Freedom of expression is internationally protected under Article 19 of the ICCPR, subject to similar restrictions as discussed for freedom of peaceful assembly and association.

4.1.3. The Reasonability of Restrictions on Freedom of Expression, Peaceful Assembly and Association

Laws regulating foreign contributions must be cautiously drafted and used with restrictive and precise interpretations. It must not be used to restrict funding sources or delegitimise the defense

of human rights.⁶² This has been internationally mandated through the 2013 resolution by the Human Rights Council (A/67/292. 3-14813). It recommends that the procedures relating to the registration and entry-level requirements of the CSOs are non-discriminatory, accessible, transparent, expeditious, inexpensive and provide space for an appeal.⁶³

A case against the broad interpretation of restrictive provisions was also taken up by the European Court of Human Rights (ECtHR). It opined that any restriction on an NGO's access to foreign funding needs to be drafted precisely to ensure the elimination of the possibility of its terms being interpreted broadly.⁶⁴

However, given the vague and overbroad language of the FCRA, one can easily say that the FCRA does not strike this proportionality in spirit; the stated objectives of the act have the potential to sweep legitimate activities, which are essential for the proper functioning of a democracy.

A fallout of a broad interpretation can be seen by analysing the ground of 'national interest' in FCRA. It has not been defined and is often used synonymously with national security, allowing the government to arbitrarily restrict the right to freedom of association.⁶⁵ As a result, through the breadth of this provision, the government can construe any disagreement with, or criticism of any of its policies, as being against the public interest.⁶⁶ This is evidenced by the use of FCRA provisions that forced many CSOs to close or limit their operations in India and lay off staff due to a lack of funds.⁶⁷

59 UN Doc. A/HRC/RES/22/6 (2013), paras 8 and 9, Available at <https://www.right-docs.org/doc/a-hrc-res-22-6/>

60 UN Doc. A/HRC/RES/22/6 (2013), paras 8 and 9, Available at <https://www.right-docs.org/doc/a-hrc-res-22-6/>

61 *Elizine v. France*, 11800/85 - Chamber Judgment [1991] ECHR 29 (26 April 1991)

62 American Bar Association. (n.d.). (rep). "India: Freedom of Association And Assembly Rights In Access to Foreign Funding." Retrieved from https://www.americanbar.org/groups/human_rights/reports/foaa/.

63 Raj K.T., and Steuwer B., (January 2020), "A Government That Chooses Its' Critique", published by The Hindu, Available at <https://www.thehindu.com/opinion/op-ed/a-government-that-chooses-its-critics/article30569264.ece>

64 Swart, M. (2020, November 13). "Indian law on foreign funding a 'tool to silence' civil society." Human Rights News | Al Jazeera. Retrieved November 20, 2022, from <https://www.aljazeera.com/news/2020/11/13/restrictions-on-funding-of-indian-civil-society>

65 UN Doc. A/HRC/23/39 (2013), paras 34, p.11.

66 All citizens shall have the right (c) to form associations or unions;

67 *Surya Pal Singh v. State of Uttar Pradesh* (1951); *Damayanti v. Union of India* (1971)

The increased regulation on foreign contributions has also augmented the requirement for reporting, executive control, and oversight. An example of this can be seen through the consistent limiting of administrative expenses – in the 2010 and 2020 amendments. This violates the international standards that allow only valid restrictions measured proportionately against the right to freedom of assembly and association. The UN Special Rapporteur on the rights to freedom of assembly and association highlighted the importance of access to resources for an NGO's existence and guaranteeing the enjoyment of other human rights of those who benefit from the work of the organisations.⁶⁸

4.2. Comparison of FCRA with the Constitution of India

4.2.1. Freedom of Peaceful Assembly and Association

Article 19(1)(b) of the Constitution of India guarantees all citizens the fundamental right to assembly peacefully without arms and Article 19(1)(c) enshrines the fundamental right to form associations, unions or cooperatives.⁶⁹ It encompasses an organisation's formation and its continuance.⁷⁰ Both rights are subject to restrictions through Article 19(2) and (4), respectively, on the grounds of public order, morality, sovereignty, or integrity of India.⁷¹ These grounds allow State action to limit freedom of peaceful assembly and association and make space for restrictive legislation such as the FCRA.⁷² Sections 7 and 17 of the FCRA exemplify the apparent conflict with the freedom of peaceful assembly and association. They impose a blanket ban on foreign contributions transfer, adversely affecting the accessibility to FCRA processes for smaller grassroots organisations.

The Supreme Court of India in *Noel Harper v. Union of India* held that FCRA, does not affect rights under Article 19(1)(c) as it does not prohibit foreign contributions or the right to form the association itself. Instead, FCRA was perceived to fall under the purview of restrictions specified under Articles 19(4) and 19(6) of the Indian Constitution.⁷³ It further noted that the right to association, trade and profession does not include the right to receive unbridled and unregulated foreign contributions.

4.2.2. Freedom of Speech and Expression

Article 19(1)(a) of the Constitution of India grants all citizens the freedom of speech and expression. This right is seeded within the foundation of all democratic organisations. The realm of space is broad enough to cover within its ambit any visible manifestation of one's idea. This essentially means that the work of voluntary organisations and CSOs are protected under Article 19(1)(a) of the Constitution of India. This right is also not absolute and subject to restrictions mentioned in Article 19(2).

The freedom of speech and expression vis-à-vis the FCRA framework, highlights two significant violations: (a) allowing some groups to receive foreign funds while restricting others; and (b) the chilling effect of the regulations on dissent and criticism. The law has thus been used against organisations, CSOs, or individual human rights defenders who are critical of the State, tagging them against the public interest. As a result, existing voluntary organisations and CSOs have been forced to self-censor, making it difficult for them to function freely and fearlessly.

68 (4) Nothing in sub clause (c) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the sovereignty and integrity of India or public order or morality, reasonable restrictions on the exercise of the right conferred by the said sub-clause

69 Constituent Assembly Debates, 1st December 1948 at 712

70 *Surya Pal Singh v. State of Uttar Pradesh* (1951); *Damayanti v. Union of India* (1971)

71 (4) Nothing in sub clause (c) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the sovereignty and integrity of India or public order or morality, reasonable restrictions on the exercise of the right conferred by the said sub clause

72 Constituent Assembly Debates, 1st December 1948 at 712

73 Protection of Certain Rights Regarding Freedom of Speech, etc. Available at <https://indiankanoon.org/doc/237570/>

The repression against voluntary organisations using FCRA has a deterrent effect on the work of other similar organisations. Both the nature of the statute and its application of the act—as seen in the past—has in fact, been designed in a way that aims to intimidate and silence CSOs as well as individual defenders, hampering their ability to mobilise and constructively criticise the government for rights violations and seek democratic accountability.

5. Impact of FCRA on the Closing of the Civic Space for NGOs and HRDs During COVID-19

In the past two years—partly owing to the government’s increasing restrictions and partly to the onset of the COVID-19 pandemic—foreign fund donations have decreased by at least 87 per cent.⁷⁴ During the third wave of COVID-19 alone, the government froze the licenses of around 6,000 CSOs engaged in relief work, barring them from receiving funds from foreign sources.⁷⁵

It is essential to realise that when the country was struggling with the unprecedented crisis posed by the pandemic, the CSOs were primarily engaged in relief work. There is ample evidence to prove that many of these organisations outperformed even their respective state governments in providing meals to migrant labourers and other groups.⁷⁶ Several organisations in fact had to shut down

their operations amidst an already crunched financial situation, which was exacerbated further as they decided to divert the funds of their existing programmes to contribute to the COVID-19 relief work.⁷⁷

These sudden changes in FCRA rules—amidst a crisis—shifted the attention of the CSOs to meet the government’s compliance requirement, taking their focus away from relief-related work.⁷⁸ Almost overnight, the amendment gutted a reliable source of funding for several NGOs already stretched thin by the pandemic. It snarled international charities and donations to the government’s work instead of local initiatives.⁷⁹

Nishant Pandey, Chief Executive of the American India Foundation, one of the largest U.S. non-profits working in India, said, ‘To come with an amendment like that in the middle of the pandemic was problematic.’⁸⁰ In a joint appeal by CSOs to the Ministry of Home Affairs for an extension of the due date renewal of FCRA licenses, it was mentioned that the organisations are struggling to help the needy due to the regulatory compliance burden hampering their response to the second wave of COVID-19.⁸¹

Harsh Jaitli, CEO of Voluntary and Action Network of India (VANI), an apex body of voluntary development organisations noted, ‘The MHA already has all the

74 Union Minister of State for Home Nityanand Rai said about 18,304 NGOs received Rs 15,355 crore in 2016-17, Rs 16,940 was received by 18,235 NGOs in 2017-18, Rs 16,490 crore by 17,540 NGOs in 2018-19 and Rs 2,190 crore by 3,475 NGOs in 2019-20. NGOs received rs 50,975-crore foreign funding in last 4 years, maximum came from US: Govt. The Economic Times. Retrieved December 8, 2022, from <https://economictimes.indiatimes.com/news/india/ngos-received-rs-50975-crore-foreign-funding-in-last-4-years-maximum-came-from-us-govt/articleshow/81672010.cms?from=mdr>

75 Kar, S. (2022, January 1). No foreign funding for over 6,000 ngos whose FCRA license expired: MHA Data. Hindustan Times. Retrieved December 8, 2022, from <https://www.hindustantimes.com/business/no-foreign-funding-for-over-6-000-ngos-whose-fcra-license-expired-mha-data-101641029019401.html>

76 Rawat, M. (2020, April 12). Coronavirus in India: In 13 states, ngos fed more people than govt did during lockdown. India Today. Retrieved December 8, 2022, from <https://www.indiatoday.in/india/story/in-13-states-ngos-fed-more-people-than-govt-during-coronavirus-lockdown-1665111-2020-04-09>

77 Centre for Social Impact and Philanthropy. (Ashoka University). (rep.). The Impact of COVID-19 on India’s Nonprofit Organisations: A Snapshot Report, from https://caps.org/content/other-research_doing-good&impact-covid-19-indias-nonprofit-organisations-snapshot-report

78 Ghosh, S. (2021, May 18). New FCRA rules choking NGO funding, Stalls Covid Relief Work. The Economic Times. Retrieved December 8, 2022, from <https://economictimes.indiatimes.com/news/india/new-fcra-rules-choking-ngo-funding-stalls-covid-relief-work/articleshow/82725394.cms>

79 Das, A. (2021, May 12). India's strict rules on foreign aid Snarl Covid donations. The New York Times. Retrieved December 8, 2022, from <https://www.nytimes.com/2021/05/12/business/india-covid-donations.html>

80 ibid

81 India Today. (2021, May 18). Covid-19: Why ngos are demanding immediate suspension of FCRA rules. India Today. Retrieved December 8, 2022, from <https://www.indiatoday.in/business/story/covid-19-why-ngos-are-demanding-immediate-suspension-of-fcra-rules-1804106-2021-05-18>

details of NGOs, and the SBI is asking for the same information and details about the trustees. It is delaying the process. The government already has an effective mechanism to monitor mischievous NGOs.⁸²

In the subsequent chapters, the report looks at the FCRA license cancellation of Amnesty International India and Commonwealth Human Rights Initiative (CHRI) as case studies, looking into the challenges posed by the new amendments to FCRA and their impact on their ongoing relief work to mitigate the effects of the pandemic.

5.1. Amnesty International India

Amnesty International (AI) in India has been working on key human rights issues – torture, repressive laws, women’s rights and gender-based violence, and corporate accountability, amongst other topics – since 1966.

The first government blow to AI India’s work came about in 2014 when the government froze the transfer of 500,000 US dollars to AI India. The government cited concerns about its income from foreign sources. The Ministry of Home Affairs restricted AI from receiving money from its parent organisation in Britain after alleging that around a third of the overall amount was traced to an offshore trust.⁸³ Ever since this incident and despite subsequent regime changes, AI India has been confronted with even sharper attacks from the Bhartiya Janata Party-

led Government.

In October 2018, the Enforcement Directorate raided the office of AI India and based on foreign exchange convention cases, demanded documents already available in the public domain or filed with the relevant government authorities.⁸⁴ Then in June 2019, AI India was denied permission to hold a press conference in Srinagar to launch their report titled ‘Lawless Law’, which earthed the misuse and abuse of the Public Safety Act in the erstwhile states of Jammu and Kashmir.

In fact, after the sudden abrogation of Article 370 of the Indian Constitution⁸⁵ in August 2019, AI India held an event in Bengaluru to discuss the pertinent human rights violations that were going on in Kashmir, heavily criticising the clampdown on civil liberties in the disputed region.⁸⁶

This was then followed by the filing of a First Information Report (FIR) on the grounds of Sedition (Section 124A of Indian Penal Code) by the Akhil Bhartiya Vidyarthi Parishad (ABVP), the student wing of the BJP, alleging AI India to be an ‘anti-national’ element.⁸⁷

Some representatives of AI were also booked under Sections 142, 143, 147, and 149 that related to unlawful assembly and rioting and Section 153A, which focused on the promotion of enmity between groups.⁸⁸ AI India’s investigative brief on the North

82 Ghosh, S. (2021, May 18). New FCRA rules choking NGO funding, Stalls Covid Relief Work. The Economic Times. Retrieved December 8, 2022, from <https://economictimes.indiatimes.com/news/india/new-fcra-rules-choking-ngo-funding-stalls-covid-relief-work/articleshow/82725394.cms>

83 France-Presse, A. (2014, February 15). Government blocks funds to amnesty over sourcing concerns: Report. NDTV.com. Retrieved December 8, 2022, from <https://www.ndtv.com/india-news/government-blocks-funds-to-amnesty-over-sourcing-concerns-report-550888>

84 Amnesty India chair Aakar Patel says he was stopped from flying to US due to CBI Lookout Notice. The Economic Times. (2022, April 6). Retrieved December 8, 2022, from <https://economictimes.indiatimes.com/news/india/amnesty-india-chair-aakar-patel-says-he-was-stopped-from-flying-to-us-due-to-cbi-lookout-notice/articleshow/90681381.cms?from=mdr>

85 BBC. (2019, August 5). Article 370: What happened with kashmir and why it matters. BBC News. Retrieved December 8, 2022, from <https://www.bbc.com/news/world-asia-india-49234708>

86 Bhakto, A. (2021, April 8). Amnesty International's latest human rights report comes down heavily on the Indian government's clampdown on Civil Liberties in Kashmir. Frontline, India's National Magazine. Retrieved February 13, 2023, from <https://frontline.thehindu.com/dispatches/amnesty-internationals-latest-human-rights-report-comes-down-heavily-on-the-indian-governments-clampdown-on-civil-liberties-in-kashmir/article34272913.ece>

87 *ABVP seeks action against Amnesty International.*, (August 2016)., published by The Hindu, Available at <https://www.thehindu.com/news/national/karnataka/ABVP-seeks-action-against-Amnesty-International/article14576155.ece>

88 *Sedition case filed against Amnesty International.*, (August 2016)., published by The Hindu, Available at <https://www.thehindu.com/news/cities/bangalore/Sedition-case-filed-against-Amnesty-International/article60528184.ece>

East Delhi Riots in February 2020, which highlighted police complicity in the communal riots with the Muslim community bearing the major brunt⁸⁹ further caused friction between the government and AI.

Rajat Khosla, Amnesty's Senior Director for Research, Advocacy and Policy, in an interview with the BBC in fact, claimed that, 'We are facing a rather unprecedented situation in India. Amnesty International India has been facing an onslaught of attacks, bullying and harassment by the government in a very systematic manner. This is all down to the human rights work we were doing and the government not wanting to answer questions we raised, whether in our investigations into the Delhi riots or the silencing of voices in Jammu and Kashmir.'⁹⁰

As a result of these gradual interventions, AI was eventually forced to halt its operations in India under what is said to be a systematic scheme of 'witch-hunt' against HRDs, CSOs and other voluntary organisations. The Indian Government even froze its bank accounts, resulting in a sudden halt, layoffs and suspension of all its ongoing campaigns. This incident, however, gathered massive international attention and global condemnation of India's repressive NGO regulation laws with the European Union being among the first ones to raise concerns, followed by the United States and the United Kingdom.⁹¹

AI India was not registered under the FCRA and had received foreign funding under the 'prior permission category.'⁹² Organisations use this category to receive a specific amount from a particular donor for specific activities and projects.

It requires organisations and associations to be registered under the Societies Registration Act 1860, the Indian Trusts Act 1882, or Section 25 of the Companies Act 1956. AI India used to seek permission from the Ministry of Home Affairs (MHA) every time it sought to receive foreign contributions. Despite repeated directions from the MHA, AI India maintained staying away from the FCRA, as they viewed it to be 'much abused by the government, operating as a curb on the freedom of expression of NGOs.'⁹³ Since 2010, AI India's application to receive foreign funding has been rejected four times.⁹⁴

Before AI India halted its operations in September 2020, in April, it wrote to the union Home Minister highlighting the incarceration and arrest of activists Gautam Navlakha and Anand Teltumbde on charges of UAPA, calling it 'politically motivated and a part of the massive crackdown on HRDs in the country.'⁹⁵ Later, it also released a report to show the use of repressive laws under the garb of COVID-19 restrictions, lack of transparency over the distribution of funds increased, the undermined right to health, caste-based discrimination and violence against Dalits and Adivasis and vigilante cow protection groups targeting minority communities.

89 Amnesty report accuses Delhi Police of torture, violence, serious rights violations during riots. The Wire. (2020, August 28). Retrieved December 8, 2022, from <https://thewire.in/government/delhi-police-riots-amit-shah-mha>

90 Limaye, Y. (2020, September 29). Amnesty International to halt India operations. BBC. Retrieved February 13, 2023, from <https://www.bbc.com/news/world-asia-india-54277329>

91 India responds to foreign govts expressing concern over amnesty closure. The Wire. (2020, October 1). Retrieved December 8, 2022, from <https://thewire.in/rights/india-responds-to-foreign-govts-expressing-concern-over-amnesty-closure>

92 Jain, B. (2020, September 29). Amnesty circumvented FCRA regulations: MHA: India News - Times of India. The Times of India. Retrieved December 8, 2022, from <https://timesofindia.indiatimes.com/india/amnesty-circumvented-fcra-regulations-mha/articleshow/78392389.cms>

93 Amnesty International. (2022, January 19). India Should Stop Using Abusive Foreign Funding Law. Retrieved December 8, 2022, from <https://www.amnesty.org/en/latest/press-release/2022/01/india-should-stop-using-abusive-foreign-funding-law/>.

94 Nair, S. K. (2016, August 18). Centre wants amnesty to get FCRA licence. Pune Mirror - Get the latest news of Pune & Pimpri Chinchwad. Retrieved December 8, 2022, from <https://punemirror.com/news/india/centre-wants-amnesty-to-get-fcra-licence/cid5258910.htm>. Also see, [Amnesty always a red rag to Home Ministry. The Economic Times. \(2016, August 16\). Retrieved December 8, 2022, from https://economictimes.indiatimes.com/news/politics-and-nation/amnesty-always-a-red-rag-to-home-ministry/articleshow/53763154.cms](https://economictimes.indiatimes.com/news/politics-and-nation/amnesty-always-a-red-rag-to-home-ministry/articleshow/53763154.cms)

95 India: Crackdown on dissent continues during COVID-19. Amnesty International. (2021, June 1). Retrieved December 8, 2022, from <https://www.amnesty.org/en/documents/asa20/2174/2020/en/>

5.2. Commonwealth Human Rights Initiative (CHRI)

The Commonwealth Human Rights Initiative (CHRI) is an international non-governmental organisation mandated to ensure the practical realisation of human rights in the countries of the Commonwealth.⁹⁶ It works in India on issues of police reforms, prison reforms, right to information and international advocacy.

CHRI held an FCRA registration license since September 1993, which was renewed in October 2016 for five years. In the next renewal cycle, CHRI's FCRA registration license was suspended for 180 days in June 2021.⁹⁷ This was extended for another 180 days in December 2021. In the interim, CHRI moved the Delhi High Court seeking relief against the suspension.

In the initial hearings, the Delhi High Court granted a temporary relief to use 25% of the funds to pay the organisation's employees. It noted in its order, 'Given that the COVID-19 pandemic has thrown most of our citizens in the throes of financial hardship and personal losses, it is a matter of deep concern that the Government has failed to take a more active approach to address the issues raised by the petitioner in the interim application.'⁹⁸

However, subsequently, the High Court refused to interfere with the cancellation of licenses by the Ministry of Home Affairs [MHA].⁹⁹ Then a day before the hearing—in a review petition against the judgement of the Delhi High Court—the MHA issued a suspension order in April 2022.¹⁰⁰

CHRI Moves the Court Regarding the Suspension Notice by the Ministry of Home Affairs (MHA):

The MHA's notice of suspension of CHRI's license under Section 13 of the FCRA was challenged before the Delhi High Court.¹⁰¹ However, the Delhi High Court rejected CHRI's plea that no inquiry was initiated to explain the alleged FCRA violations before the license suspension. It held that Section 13(1) of the FCRA does not offer such an opportunity to be given to the certificate holder or any inquiry before the suspension.

It noted that wherever the legislature intended to stipulate inquiry/opportunity, it had said so, like in Section 14 sub-clause (1) and (2), which relate to the cancellation of FCRA licenses. It also noted that the absence of such an inquiry/opportunity must be seen in the context of the overall mandate of the FCRA as mentioned in the preamble.

96 Commonwealth Human Rights Initiative, <https://thecommonwealth.org/organisations/commonwealth-human-rights-initiative-chri>

97 By an order dated June 07, 2021 the Ministry of Home Affairs suspended CHRI's FCR License for 'multiple violations of provisions of FCRA, 2010' under Sections 8(1)(a), 17(1), 18 and 19 of FCRA, 2010 read with rule 9(1)(e) and 17 of the FCRR, 2011. The specific instances stated in the suspension order are as under:

Non-disclosure of details of activities/projects for which foreign contribution has been received and utilized in the financial year 2018-19;

Non-intimation about a bank account opened in 2016 where there was a flow of foreign contributions and another utilization account where the organization has been utilizing foreign contributions in violation of Rule 9(1)(e) of the FCRR, 2011.

Refund of some foreign contribution back to the donor in financial years 2013-14 and 2014-15 in violation of Section 8(1)(a) of the FCRA, 2010; and Mixing foreign contributions with domestic donations violates Section 17 of the FCRA, 2010.

98 *Commonwealth Human Rights Initiative v. Union of India*, W.P.(C) 6400/2021

99 *Commonwealth Human Rights Initiative v. Union of India*, W.P.(C) 6400/2021

100 Joy, S. (2022, April 28). "Govt cancels permission granted to CHRI to receive foreign funds", Available at: <https://www.deccanherald.com/national/govt-cancels-permission-granted-to-chri-to-receive-foreign-funds-1104709.html>; Deccan Herald. Retrieved February 13, 2022

101 The challenge by CHRI to the MHA's order of license cancellation was based on the following grounds: (a) no inquiry preceded the suspension under Section 13; (b) no reasons are recorded for such a suspension; (c) allegations about non-intimation of a bank account is not true and intimations were made about the same on multiple occasions; (d) the returns to the donor in 2013-14 were bona fide returns which does not violate Section 8(1)(a) of FCRA, 2010, among other grounds.

Furthermore, the High Court held that the violations constituted reasons for the suspension of the certificate. It held that if the offence makes a strong *prima facie* case against the certificate holder, which can lead to the cancellation of a certificate under Section 14(2), then the Central Government will be justified in suspending the certificate. The Court observed that the satisfaction in the cases of

suspension and cancellation is that of the Central Government, and the Court cannot substitute the reasons unless they appear to be perverse. It noted that the scope of judicial review in such matters is limited and should only be exercised when it is a *mala fide*, arbitrariness, or an ulterior motive.

6. Findings and Recommendations

CSOs and other non-profit associations bore the brunt of COVID-19, which was worsened by the recovery measures initiated by the government. The effect of this double crisis is two-fold: (a) the constitutional challenges posed by the fundamental rights and freedoms; and (b) the practical difficulties faced due to cumbersome compliance mechanisms.

The report finds significant contradictions in FCRA when tested against the fundamental right to free speech and expression, peaceful assembly, and association. The safeguards like fundamental rights and freedoms pose a challenge both in the existing national legal framework and the international obligations of India. It is seen to violate fundamental rights and the current constitutional jurisprudence.

A liberal interpretation of Article 19 of the Constitution of India would unearth the FCRA's contradictions. It calls for an objective judicial review of the FCRA as it stands today after subsequent amendments. The legislation must be looked at purposely, against the legislative intent of its introduction in 1976. The solution must balance the interests of the CSOs and the State to limit the role of the FCRA as an enabling statute instead of one that ultimately impairs the CSOs from carrying out their work. The safeguards against a blatant control of the Government of foreign funding must be adhered to in the national and international framework. The Act must be limited to have a regulatory intention and not one of complete restriction.

Moreover, the Act must be reviewed considering the practical constraints highlighted in the report. A cumbersome compliance mechanism under the Act, especially when introduced during an emergency, diverts their focus from the pressing need for relief work. The introduction of the 2020 amendments to the FCRA exhibits how it has impaired relief work that could otherwise be helpful to mitigate the pandemic.

The Act must be re-structured to simplify the compliance mechanisms making the FCRA license procurement process accessible to smaller grassroots organisations. A purposeful agent must enable the right to receive and meaningfully use foreign contributions. Mainly when CSOs focus their attention on mitigating public health and other related crises, like the COVID-19 pandemic, the Government must also, in return, ease out their burden of compliance instead of making it more cumbersome.

6.1. Recommendations to the Government of India

1. Respect the right to freedom of peaceful assembly and ensure that procedures related to foreign funding are not politicised or misused to place undue restrictions on forming associations and carrying out work that seeks government accountability and promotes human rights.
2. Ensure that the legislation regulating foreign contributions allows for a complete license cancellation only when extreme violations are found. Canceling the FCRA license often forces CSOs to cease their operations which impairs democracy in India.

6.2. Recommendations to the National Human Rights Commission, India

1. Undertake a qualitative review of the FCRA and its subsequent amendments under Section 12(d) of the Protection of Human Rights Act, 2019.
2. Recommend amendments to the FCRA, to ensure that it does not violate the national and international safeguards of freedom of speech and expression, peaceful assembly , and association.

6.3. Recommendations to the Civil Society

1. Organise advocacy efforts to challenge the existing FCRA, against the safeguards available under the national and international legal framework.
2. Organise and attend training sessions to gain familiarity with the compliance mechanisms and undertake them without affecting their ongoing work disproportionately.

6.4 Recommendation to the UN

1. UN Special Procedure mandate holders should call for the repeal of FCRA or its review in line with international human rights standards.
2. Call on the Indian government to end harassment against civil society organisations and human rights defenders using FCRA.

THE MALDIVES: THE COVID-19 PANDEMIC & IMPACT ON CIVIC SPACE

1. Introduction

This study assesses the impact of the COVID-19 pandemic on civic space in Maldives and analyses how various laws, including the state of a public health emergency, were used to obstruct the work of civil society organisations (CSOs) and trample on fundamental freedoms during the pandemic. The Maldives declared a status of public health emergency on 12 March, 2020¹, which was lifted on 13 March, 2022². Several temporary lockdowns were put in place for two years – public offices were closed and a virtual system replaced the day-to-day work and service provision. Although civil society is significantly smaller in the Maldives compared to other South Asian countries, it has been able to mobilise civilians as was evident during the pandemic when the public health emergency was declared in the Maldives.

2. Methodology

The study relies on a mixed model of primary and secondary research where data have been collected through interviews with civil society activists to analyse lived experiences during COVID-19. Subsequent lockdowns and COVID-19 related safety regulations put in place by the government, necessitated changes to work models.

Interviews were conducted in English and Dhivehi languages. Participants were able to provide their responses through written or oral submissions. Due to the small number of civil society activists within the country, a sample of 10 respondents was selected for the study. Respondents included human rights organisations and human rights defenders, including legal practitioners. Given the repressed atmosphere for civil society activists, the identities of the participants have been anonymised.

1 PSM News, “Maldives Declares State of Public Health Emergency”, Mar 12, 2020, <https://psmnews.mv/en/65081>

2 The President’s Office, “The President Announces the Lifting of the Public Health Emergency”, March 13, 2022, <https://presidency.gov.mv/Press/Article/26381>

Meanwhile, documented restrictions such as legislative changes, circulars and announcements made by State authorities were collected through desk research. Given that the official language of the Maldives is Dhivehi, and all legislation and official announcements are primarily in the local language, in situations where English translations were unavailable, relevant publications and sections of laws were translated into English for this study.

3. Political Context and Human Rights Situation of the Maldives

The Maldives has had a tumultuous history of transitioning to democracy and it is yet to fully recover from the gradual regression to authoritarianism and autocratic rule over the past decade. Consequently, the civic space in Maldives was shrinking steadily even before the pandemic. The authorities in Maldives used the pandemic as a pretext to further weaken the civil society organisations (CSOs) and human rights defenders – pushing them into silence or self-censorship.

To deal with the crisis set forth by the pandemic, the Maldives used the provisions under the Public Health Protection Act. The law provides for the Minister of Health to declare a state of public health emergency, and grant extraordinary powers to the Director General of Public Health to prevent and control the spread of such diseases; including orders for restrictions on freedom of expression and peaceful assembly, and closure of businesses and services.

Furthermore, on 7 May, 2020, President Ibrahim Mohamed Solih established the National Task Force on Resilience and Recovery³ to address the short to medium-term challenges posed by the pandemic. The Task Force's mandate includes acquiring funds for recovery plans and devising transparent

solutions for all directives falling under its realm. Pertinently, the Anti-Corruption Commission (ACC) made allegations⁴ of corruption against the Minister of Health, Abdulla Ameen and ten others for the fraudulent purchase of 149 ventilators during the pandemic. No charges were pressed against them and ACC's investigation was repeatedly rejected by the Solih regime.

The Human Rights Commission of the Maldives reported a total of 627 complaints lodged with them in 2020, three-quarters of which fall under the period declared a public health emergency⁵. Out of these complaints, 141 are related to inadequate health services and 102 are related to employment rights violations and 54 are related to torture. In the same year, the Commission received 119 complaints categorised as human rights violations, in relation to sudden changes brought about by the COVID-19 pandemic. The Commission's annual report further stated that the majority of these complaints is related to socio-economic rights.

In 2021, the Commission received 672 complaints, out of which 520 were registered by the Commission itself⁶. Out of the registered complaints, 136 were related to the right to the medical care of prisoners, and 68 were related to torture.

The nature of the complaints lodged and investigated by the National Human Rights Institution (NHRI) indicates areas in which CSOs have been active before the pandemic in the absence of restrictions such as those of the rights to movement, peaceful assembly and working models. The decline in the ability for CSOs action and support for victims can be seen by the high number of complaints lodged at the NHRI.

The Maldives also experienced a spike in gender-based violence, especially in cases of domestic

3 The President's Office, "Establishment of National Taskforce on Resilience and Recovery", March 7, 2020, <https://presidency.gov.mv/Press/Article/23335>

4 Malsa, M., "PG Decides Not to Press Charges Over Ventilator Controversy", The Edition, October 20, 2020, <https://edition.mv/uk/19853>

5 <https://hrcm.org.mv/storage/uploads/xRwXBBqW/locpmdq4.pdf> (Dhivehi version)

6 <https://hrcm.org.mv/storage/uploads/BdodrpYp/jok5auyp.pdf> (Dhivehi version)

violence during COVID-19-related lockdowns. The Family Protection Authority (FPA) registered 615 cases of domestic violence in 2020 and a total of 673 cases were reported to the authorities from other institutions. In 2021, the FPA received 577 reports of domestic violence (the total number of reports received from other institutions in 2021 is unavailable).

According to the United Nations Population Fund (UNFPA)⁷, 'reporting of such cases was reduced during the lockdown period and a surge in reporting was seen as the lockdown was lifted'. This suggests the inability of survivors to contact or seek assistance from CSOs who otherwise take over the administrative tasks of filing complaints or finding safe houses for them. In addition, while being locked down with their abusers, they did not have the freedom to reach out to CSOs.

Migrant workers

The Maldives has an estimated 250,000 migrants⁸, the majority of whom are employed in low-skill industries such as construction, hospitality, agriculture and fisheries. Out of these, 60,000 migrants are irregular, having been trafficked or have lost their immigration status and are employed as informal labour. The migrant workers were already vulnerable as they lacked equal access to social protection, health and housing services of Maldivian nationals.

The COVID-19 pandemic accentuated their vulnerability. Irregular migrants were excluded from government assistance relief measures and

others had to resort to seeking an assisted return to their home countries — 2,900 Bangladeshi migrants were sent back to their home country by a 'repatriation' programme led by the government of Maldives. There is no available information of any civil society consultations held by the government prior to sending workers back. The 2020 Trafficking in Persons report⁹ placed the Maldives on the Tier 2¹⁰ Watch List, citing its failure to prevent practices of forced labour among migrant workers, including fraudulent recruitment, confiscation of identity and travel documents, withholding/non-payment of wages, and debt-based coercion.

Fair trial

A significant role of CSOs in ensuring fair trials through observation of trials was obstructed by the pandemic restrictions. Although the shift of trials to a virtual model was important for their continuity and the functioning of the judicial systems, not enough consideration was given to the design of online hearings as they were limited to the participation of the parties involved and their lawyers only, apart from the court officials.

Models used by different courts varied as well, in that the Supreme Court employed a practice of live-streaming public hearings on social media while others did not. However, CSOs and legal practitioners saw the move to hold virtual hearings as a progressive step. An interviewee lauding the move noted that 'virtual courts ensured that judicial proceedings did not halt and it made it easier for people to attend hearings – especially for those based in far islands.'

7 UNFPA, "Gender-Based Violence During COVID-19 Pandemic in the Maldives: An Analysis of Reported Cases", 2021, https://maldives.unfpa.org/sites/default/files/pub-pdf/gbv_analysis_final.pdf

8 United Nations Maldives, "COVID-19 Socio-Economic Response and Recovery Framework", 2020, https://unsdg.un.org/sites/default/files/2020-08/MDV_Socioeconomic-Response-Plan_2020.pdf

9 Department of State, United States of America, "Trafficking in Persons Report 20th Edition", June 2020, <https://www.state.gov/wp-content/uploads/2020/06/2020-TIP-Report-Complete-062420-FINAL.pdf>

10 The Borgen Project, "Human Trafficking in the Maldives", December 29, 2022, <https://tinyurl.com/mr3erc43>

4. Repressive Laws and their Impact on Civic Space

This section of the paper looks into repressive laws and policies that existed pre-pandemic and continued to be enforced arbitrarily during the pandemic. The laws selected for this study are those that have had the strongest impact on fundamental freedoms and civic spaces in the Maldives, such as the right to peaceful assembly and association. An in-depth review of the legislation shows how the State has continued to use laws that are against constitutional principles for silencing calls for human rights and compliance with international obligations.

4.1 The Right to Peaceful Assembly Act

Article 32 of the Maldivian Constitution states that ‘everyone has the right to peaceful assembly without the prior permission of the State’¹¹. However, one of the most repressive laws in the Maldives obstructing civil and political rights is the Right to Peaceful Assembly Act¹². The law in its original form required organisers of assemblies to provide a ‘notice’ of the event to the police and gives the police the full authority to disperse an assembly.

The law was passed during the transition between the February 2012 *coup d’état* and the 2013 presidential elections, and amidst daily protests calling for early elections and an investigation of the coup. In 2016, an amendment was brought to Section 24 of the law, which stated that assemblies taking place in locations outside those specified by the Ministry of Home Affairs would only be allowed with a special permit from the police. Adding to the list of permitted locations, the revised law also

provided specific measurements for assemblies between the event and places such as schools, mosques, government offices, State buildings and residences of certain public officials.

This amendment left practically no space for the right to freedom of peaceful assembly and protest in the highly congested area of two square miles in the capital Malé. The CSOs in the Maldives have repeatedly flagged the dissonance between the law and the provisions in the International Covenant on Civil and Political Rights (ICCPR), but this criticism has not been addressed by the consecutive governments. While President Solih pledged to repeal the amendment during the run-up to the 2018 elections, the Home Minister Imran Abdullah declared in 2019 that the government would not move towards repealing it¹³. A supermajority of the ruling party in parliament would prevent the opposition from successfully repealing the amendment as well.

Although the right to peaceful assembly is essential for a thriving democracy and the civic space, it was severely trampled upon during the pandemic. A Maldivian civil society activist interviewed for the study expressed the inability to protest on issues of public concern saying ‘Although there were important issues that the civil society needed to respond to, even to protest against, we were not allowed. There were allegations of corruption against the Health Minister, ‘India Out’ protests, and even the alleged death of a child due to medical negligence.’ Another member mentioned that ‘the police outrightly refused to permit any gathering or protest’, highlighting the problems associated with the provision of prior permission from the police.

Restrictions brought in place by the COVID-19

11 Hussain, D., “Functional Translation of the Constitution of the Republic of Maldives 2008”, Accessed June 22, 2023, <https://storage.googleapis.com/presidency.gov.mv/Documents/ConstitutionOfMaldives.pdf>

12 Freedom of Peaceful Assembly Act, Accessed June 22, 2023, https://www.rightofassembly.info/assets/downloads/2013_Freedom_of_Peaceful_Assembly_Act.pdf

13 Junayd, M., “Home Minister Opposes Lifting Restrictions on Freedom of Assembly”, Maldives Independent, November 27, 2019, <https://maldivesindependent.com/politics/home-minister-opposes-lifting-restrictions-on-freedom-of-assembly-149534>

pandemic impeded on this fundamental right, leaving CSOs with little to no space for public engagement and mobilisation. Even when the protests were in accordance with the COVID-19 guidelines, such as wearing masks or maintaining a 1.5-meter distance, the police immediately cracked down on these demonstrations and dispersed the protestors.

A case in point was a protest organised by a voluntary group, Navaanavai, on 22 June, 2020 in front of the parliament house, maintaining COVID-19 precaution measures¹⁴. In a press statement, the group said that the police used excessive force to disperse the protestors¹⁵. An interviewee noted that 'given all the troubles the pandemic brought with it and then government's response to it, there was no real motivation to resist what was happening. Only a few tried to protest.' This is indicative of how CSOs was stripped of the capacity to continue its work by the pandemic and then accentuated by the government's policies.

In July 2020, the law was used to arrest and detain 80 migrant workers who peacefully protested against slavery and bonded labour, following 6 months of unpaid wages and inhumane living conditions.¹⁶ Instead of addressing migrant workers' rights, the Defence Minister claimed that circumstances of slavery were being used as a front for protests with ulterior motives¹⁷. On 14 July, the Ministry of Home Affairs declared that street protests, marches and parades, and other gatherings need written approval

from the Maldives Police Service (MPS) following the Freedom of Peaceful Assembly Act¹⁸.

On 20 October 2020, the police released a statement, calling on the public to restrict assemblies to places away from locations that were prohibited by law (deemed unconstitutional since the 2016 amendments) and to respect rules and regulations while conducting such activities. The statement also said not to cause inconvenience to other people and businesses during protests or demonstrations. The statement ended with a reminder that the police would take legal action against anyone disobeying those guidelines or police orders¹⁹.

A similar statement was issued by the police on 26 February 2021 referring to an announcement from the Health Protection Agency that prohibits gatherings exceeding 10 persons, warning that anyone planning nationwide gatherings or protests or are found to be violating the directive was to be confronted with legal action²⁰.

The Human Rights Commission of the Maldives in its annual report of 2020 reported observing five protests during the year, and noted that demonstrations and protests were significantly low owing to the COVID-19-induced restrictions²¹. In 2021, the Commission observed 12 protests organised by political parties and one protest by a civil society organisation²². This is indicative of the profound impact of COVID-19 on the right to peaceful protest in the Maldives.

14 <https://twitter.com/navaanavai/status/1274916103437922304?t=gbADIAY15GF52ii1qR-aYg&s=35>

15 https://twitter.com/navaanavai/status/1275729260112642048?t=2b28a2DQ_S5p-viDwYNiOA&s=35

16 Human Rights Watch, "Maldives: Migrants Arrested for Protesting Abuses", July 24, 2020, <https://www.hrw.org/news/2020/07/24/maldives-migrants-arrested-protesting-abuses>

17 Mohamed, S., "Defence Minister Claims Expatriate Riots Not Stemming from Unpaid Wages", The Edition, July 21, 2020, <https://edition.mv/news/18033>

18 Aiham, A., "No Gatherings Without Prior Written Approval: Ministry of Home Affairs", The Edition, July 14, 2020, <https://edition.mv/news/17879>

19 <https://www.police.gov.mv/media/news/wp-22220> (Dhivehi version)

20 <https://twitter.com/PoliceMv/status/1365225234224148481/photo/1>

21 <https://hrcm.org.mv/storage/uploads/xRwXBBqW/locpmdq4.pdf> (Dhivehi version)

22 <https://hrcm.org.mv/storage/uploads/aMwLNQqr/eunscqe2.pdf> (Dhivehi version)

4.2 The Associations Act

The Associations Act, 2003 is a pre-constitution law that came into force in 2003. It neither complies with the standards outlined in the Maldivian constitution, nor with the International Covenant on Civil and Political Rights (ICCPR). It has several arbitrary provisions such as mandatory registration, controls over the receipt of external funding and penalties such as imprisonment for failure to register an association. This legislation was applied to the conduct of CSOs until November 2022 when the prevailing Associations Act, 2022 was enforced. As a result, the law was implemented alongside the Regulation of Associations throughout the pandemic.

The regulation established the office of the Registrar of Associations, appointed by the President, who had the sole authority to refuse permission to register an organisation or to de-register one. It further stated that foreign funding over approximately US\$9,700 could only be accepted by associations who have been provided with a permit by the Registrar²³. The law did not categorise types of associations and hence registered over a thousand associations as Non-governmental Organisations (NGOs), which included charitable organisations, quasi-government associations, entertainment and recreational clubs and other types of organisations.

A 2011 study of the Maldivian civil society conducted by the United Nations Development Programme (UNDP) in the Maldives highlighted the law's 'inadequacies, shortcomings and even hindrances about its allowances for the optimal functioning of CSOs'²⁴. The Associations Act (2003) is extremely

vague and gives unchecked and arbitrary powers to the Registrar with no prescriptive guidelines on how or when should the penalties be imposed on organisations. Consequently, it is not surprising that organisations faced challenges of inconsistent and discriminatory behavior by the Registrar prior to the enforcement of the 2022 Associations Act.

The NGO Federation of Maldives, a 62-member organisation, was dissolved by the Registrar in 2018 in connection to a statement made by the Federation calling on the government to uphold a Supreme Court decision to release political prisoners²⁵. In 2019, the Maldivian Democracy Network (MDN), one of the oldest human rights bodies in Maldives, was arbitrarily shut down²⁶ amidst an ongoing investigation into allegations of blasphemy against the four authors of a 2015 research report²⁷ that revolved around violent extremism in the country. The MDN was neither provided with a right to any form of reply, nor were the allegations made against them clarified²⁸.

During the pandemic, a smear campaign was launched against Uthema²⁹ – a women's rights organisation – against its submission to the CEDAW review. This was followed by an anonymous complaint at the Maldives Police Services against the organisation. Neither Uthema nor the Maldivian Democracy Network (MDN) has been given any update on the status of investigations against them. This is indicative of the vague and arbitrary nature of the law, and the impunity enjoyed by the government to use it to crack down on the right to association of CSOs.

The present Associations Act was enforced

23 CIVICUS, "The Republic of the Maldives Joint Submission to the UN Universal Periodic Review 36th Session of the UPR Working Group", October 2, 2019, <https://www.civicus.org/documents/Maldives.JointUPRSubmission.pdf>

24 UNDP Maldives, "Comprehensive Study of the Maldivian Civil Society", September 2011, <https://www.gov.mv/dv/files/comprehensive-study-of-the-maldivian-civil-society.pdf>

25 U.S. Department of State, "2018 Country Reports on Human Rights Practices: Maldives", Accessed June 22, 2023, <https://www.state.gov/reports/2018-country-reports-on-human-rights-practices/maldives/>

26 Maldives Independent, "Maldives Bans NGOs Over 'Anti-Islamic' Report", November 5, 2019, <https://maldivesindependent.com/politics/maldives-bans-ngo-over-anti-islamic-report-149049>

27 <https://mvdemocracy.org/preliminary-assessment-on-radicalisation-in-the-maldives-2015/>

28 FIDH, "Maldives: Reverse the Decision to Dissolve the Maldivian Democracy Network", November 6, 2019, <https://www.fidh.org/en/issues/human-rights-defenders/maldives-reverse-the-decision-to-dissolve-the-maldivian-democracy>

29 CIVICUS, "Civil Society Group's Funds Seized in the Maldives While Women's Rights Organisation Smeared Online", Accessed June 22, 2023, <https://tinyurl.com/2rw3ntmz>

in November 2022, with elaborate provisions determining precisely the types, functions, responsibilities and privileges of associations in the country³⁰. It also provides the registrar with the authority to ask for a judicial order to stop an association if it believes that the organisation is engaging in an ‘unlawful activity’.

However, given the history of the obstruction of right to association in the Maldives, this seems to be providing another reason for the government to deregister CSOs critical of them. At the time of writing, the CIVICUS Monitor (a research tool that provides close to real-time data on the state of civil society and civic freedoms) has a live rating on the Maldives reading ‘Obstructed’³¹.

4.3 The Police Act

The Police Act was brought into force on 5 August, 2008³² and defined the objectives, powers, immunities, and other principles that apply to the police of the Maldives. The law was replaced by the Maldives Police Service (MPS) Act in March 2021. Similar to its preceding law, it aims to streamline the police by ensuring adherence to the constitution. In the Maldives, police impunity continues to be a challenge as the State institutions have failed to ensure accountability of law enforcement officers.

The MPS Act set up Professional Standards Command within the police force tasked with internal investigations into police misconduct and other disciplinary issues within the police. However, cases of reported police brutalities are responded to with promises of investigation, often without follow-up investigation or confirmation of action against perpetrators³³. Failure to follow through with investigation and disciplinary action raises

questions about the integrity and objectivity of the Disciplinary Board formed within the service, given the high possibility of conflict of interest.

The two laws have vague language and give extended authority to police personnel to make arrests and disperse protestors with no clear protocol of what an ‘unlawful protest’ is. This allows the police to push back on civic action as was evident during the pandemic — the rights to peaceful protest and freedom of peaceful assembly that are quintessential to a thriving civil society, were stifled during the period of the COVID-19 pandemic.

In May 2021, a protest³⁴ against sexual harassment at workplaces was dispersed by the police using disproportionately excessive force. Although the Commissioner of Police ensured that an inquiry would be conducted into the incident, the outcome of the inquiry remains unknown except for the temporary suspension of police personnel involved in the violence against protestors³⁵. An observer also noted that ‘the government reaction was harsher towards activities led by civil society like the “India Out” campaign, as opposed to the protests by political parties.’

Protests as a method of activism have been impactful in the Maldives but they could not be organised due to heavy-handed dispersal tactics used by the police, along with the fear of detention of organisers and civil society activists. The inability of CSOs to mobilise for urgent action was strongly felt, especially in the case of migrant workers who were protesting bonded labour and slavery, but all protests were disrupted or disallowed by the police.

30 CTL Strategies, “Associations Act”, August 7, 2022, <https://tinyurl.com/2s4h37mm>

31 CIVICUS, “Harassment of Journalists, Activists, As Well As Anti-Protest Decree Erodes Freedoms in the Maldives”, Accessed June 22, 2023, <https://tinyurl.com/mvh465xx>

32 Phairoosch, A., “Unofficial Translation of Law Number 05/2008 (Police Act)”, December 2009, <https://tinyurl.com/yywr8he>

33 Junayd, M., “7 Officers Suspended as Police Brutality Probe Underway”, Maldives Independent, July 9, 2019, <https://maldivesindependent.com/crime-2/7-officers-suspended-as-police-brutality-probe-underway-146511>

34 Areeba, “Mayday Protest Planned Against Sexual Harassment at the Workplace”, The Times of Addu, May 1, 2021, <https://timesofaddu.com/2021/05/01/mayday-protest-planned-against-sexual-harassment-at-the-workplace/>

35 <https://haftha.mv/103442> (Dhivehi version)

4.4 The Religious Unity of Maldivian Citizens Act

Initially enforced for the first time in 1994 and then subsequently amended in 2014 and 2016, the Religious Unity of Maldivian Citizens Act³⁶ mandates religious belief of Maldivian citizens and regulates the conduct of the people on religious terms. Although the Maldives has ratified the ICCPR, it states a reservation on the right to freedom of religion. The Maldivian constitution designates Islam as the official State religion, requiring citizens and public office holders, including the President, to be part of the Sunni sect of Islam. Propagation of any other religion is a criminal offence.

In 2014, the law was amended³⁷ to include any disruptions to the religious unity of Maldivians through 'written word, speech or behaviour in a way that may constitute to attempting to create a religious discord among the society; the establishment of places of worship for religions other than Islam; and the import and possession of religious books other than those related to Islam' as prohibitions.

The law defines the meaning of religious speeches and clarifies provisions of Islam – although these apply to clerics and religious scholars, it has been used more often against human rights activists, politicians and journalists. In August 2021, the Maldives Journalist Association³⁸ published a threat perception in which 37 per cent of the 70 local journalists who participated, reported 'being labelled irreligious' and threatened by radicalised or violent extremist individuals or groups online.

Foreigners are also prohibited from practicing their religion openly and are expected to practice their religion discreetly. This expectation applies to

almost 200,000 non-Muslim residents in Maldives, including migrant workers³⁹. The law also prohibits '...harassment of Allah, the Prophet (Muhammad), his (Prophet Muhammad's) Sunnah, Islam and the Qur'an' but does not clearly define what exactly constitutes 'harassment'. The provision has been used against human rights activists who advocate for equality and democracy; NGOs, HRDs and individuals that advocate against female genital mutilation, child marriages, and marital rape are labelled as anti-Islamic⁴⁰.

The Religious Unity of Maldivian Citizens Act has been weaponised against CSOs, mainly women's rights activists and groups, and those working on countering religious extremism. The law was also used arbitrarily during the pandemic against those who critique the government over human rights violations and lack of accountability. While at least four civil society groups were targeted and persecuted under the law, several individuals were also labelled 'anti-Islamic' merely for speaking out against human rights violations rampant during the pandemic.

The sustained impact of the law on civic space has been self-censorship within CSOs, given the fear of persecution and vigilante justice as has been demonstrated by the murder of MP and religious scholar Dr. Afrasheem Ali (2012), the enforced disappearance of journalist Ahmed Rilwan Abdullah (2014), and the murder of blogger Yameen Rasheed (2017). The law has in fact been weaponised to crackdown on freedom of expression.

Furthermore, in November 2021, the Parliament passed amendments to the Penal Code criminalising Takfirism (an Arabic term to describe a Muslim accusing another Muslim of having left the faith)

36 <https://mvlaw.gov.mv/pdf/ganoon/chapterII/6-94.pdf> (Dhivehi version)

37 <https://mvlaw.gov.mv/pdf/ganoon/chapterII/8-2014.pdf> (Dhivehi version)

38 U.S. Department of State, "2018 Report on International Religious Freedom: Maldives", June 2, 2023, <https://www.state.gov/reports/2021-report-on-international-religious-freedom/maldives/>

39 Mohamed, S. M., "Protecting Migrant Workers in Maldives", International Labour Organisation, Accessed June 22, 2023, https://www.ilo.org/wcmsp5/groups/public/---dgreports/---inst/documents/publication/wcms_776391.pdf

40 Ganguly, M., "Expressing Religious Views is Risky in the Maldives", Human Rights Watch, January 28, 2019, <https://www.hrw.org/news/2019/01/28/expressing-religious-views-risky-maldives>

and related violence⁴¹. The amendment criminalises insulting Allah, the Qur'an, Prophet Muhammad and his Sunnah. However, the amendment does not include the prevention of intolerance towards other religions, despite the severity of anti-Semitism in the Maldives⁴².

NGOs in the Maldives have repeatedly stated that persistent online and in-person threats against individuals perceived to not be 'sufficiently Muslim' are not taken seriously by the government — NGOs reported fear of retribution and a lack of confidence in the government's ability to act against perpetrators. Similarly, NGOs and journalists often have to resort to self-censorship on issues distantly relating to Islam due to fears of being labelled 'anti-Islamic' or 'secular'. The Maldivian government is yet to address hate speech and harassment of NGOs, journalists and civil society activists online and offline.

4.5 Public Health Protect Act and State of Public Health Emergency Act

At the onset of the pandemic, the Minister of Health declared a state of public health emergency under Section 33 of the Public Health Protection Act (PHPA)⁴³. In the state of a public health emergency, Section 34 of the PHPA provided the Director General of Public Health with the authority to undertake measures concerning vaccination; closure of educational facilities; shutting down of public spaces and prohibition of gatherings; assistance to quarantined persons; and prohibition as well as control of transport via land, sea, and air.

Additionally, the State of Public Health Emergency Act was passed by the Maldivian Parliament on 22

September 2020⁴⁴ with immediate effect lasting 60 days, following the ongoing state of a public health emergency. This time-bound law included several provisions that ensured the smooth running of state affairs, especially related to public services and regulation of judicial matters in lockdowns and curfews. The law also incorporated several protection measures for employees, including a special leave for COVID-19 infection, special criteria for employers wishing to lay off staff, the inclusion of health insurance for COVID-19 treatment, and special provisions for frontline workers during the pandemic. The law, however, also empowered authorities to implement directives that impacted civic space by introducing strict penalties on those who violated these directives.

It also authorised the Director General of Public Health to seek assistance from the police to enforce these penalties. According to Section 44, an individual who violates a directive could be fined between 1,000 and 10,000 Maldivian Rufiyaa (approximately 65 - 650 US Dollars), and legal entities were liable to be fined for an amount between 5,000 and 100,000 Maldivian Rufiyaa (approximately 324 - 6,500 US Dollars). The state of public health emergency was used to curtail the work of CSOs as organising support, demonstrations or assistance for vulnerable groups became difficult and nearly impossible.

Maldives Police Service (MPS) discouraged large gatherings and restricted the movement of protestors citing the Health Protection Agency's (HPA) COVID-19 regulations. The state of public health emergency was used to violate the right to hold peaceful assemblies and protests safely.

41 Mohamed, M., "Criminalising Takfiri Speech in the Maldives", Dhivehi Sitee, July 16, 2021, <https://www.dhivehisitee.com/parliament/criminalising-takfiri-speech-in-the-maldives/>

42 Maldivian Democracy Network, "Preliminary Assessment on Radicalisation in the Maldives 2015", November 19, 2021, <https://mvdemocracy.org/publications/preliminary-assessment-on-radicalisation-in-the-maldives-2015/>

43 PSM News, "Maldives Declares State of Public Health Emergency", March 12, 2020, <https://psmnews.mv/en/65081>

44 Premier Chambers, "An Overview of Public Health Emergency Act 2020", October 10, 2020, <https://www.premier-chambers.com/public/Overview%20of%20Public%20Health%20Emergency%20Act.pdf>

All the avenues for civic action and political dissent were closed off, allowing the state to backtrack on the fundamental rights of vulnerable groups who had little or no means to resist. Several directives and announcements made public on the website of the HPA were no longer available at the time of writing this paper.

5. Failure to Hold Timely Elections

The enactment of the Public Health Emergency Act in 2020 postponed the Local Councils and Women's Development Committee elections which were scheduled for April 2020⁴⁵. The elections were initially deferred to 18 April, 2020 following which, another plea seeking to delay the elections was filed in the High Court⁴⁶. Five days before the elections were due, the Commission announced that an election would not be possible due to the pandemic, causing infinite delays⁴⁷. The Parliament Standing Committee on Independent Institutions passed a motion that elections would not be postponed beyond 6 January, 2021⁴⁸.

This meant that the tenures of existing elected Councilors would expire much before the new Councilors were elected, potentially leading to a constitutional crisis.

Pursuant to the advice from the Supreme Court regarding the void that was being created owing to the ending tenures of sitting Councilors before the elections could be held, the Parliament passed a fifth amendment to the Constitution through Article 231(b)⁴⁹ that extended the tenures of the existing Councilors given the inability to hold elections due to the pandemic. The repeated postponements and inability of the Elections Commission to set a definite date for the elections led to several candidates losing confidence and withdrawing their names.

In November 2020, 86 candidates⁵⁰ withdrew their candidacy from the elections, out of whom, 27 candidates were running for the Women's Development Committee elections. By early December, 16 more candidates⁵¹ withdrew their names, among whom, 6 candidates were previously running for the Women's Development Committee election.

When the elections did actually take place, voter turnout was significantly lower at 65 per cent⁵² when the polling ended. The prolonged confusion regarding the polling dates and the voter re-registration required caused the significant withdrawal of candidates and is likely to have caused the low voter turnout. The change in candidates also resulted in local governments that people did not anticipate working for the best interests of their communities.

45 Adam, M. A., "LCE2020: EC Receives Over 3000 Application Forms from Interested Candidates", Raajje.mv, February 21, 2020, <https://raajje.mv/71705>

46 Adam, M. A., "EC Seeks High Court Order to Delay Local Council Elections, Indefinitely", Raajje.mv, March 15, 2020, <https://raajje.mv/73250>

47 Zalif, Z., "Special Committee Report on LCE Bill Forwarded to Majlis", April 29, 2020, <https://raajje.mv/76760>

48 PSM News, "Parliament Passes Special Bill on Local Council Elections", April 29, 2020 <https://psmnews.mv/en/67609>

49 Shaahunaz, F., "Parliament Approves to Extend Terms of Local Council", The Edition, June 2, 2020, https://edition.mv/maldives_constitution/17017

50 Shaany, A., "86 Candidates Withdraw from Local Elections", Raajje.mv, November 26, 2020, <https://raajje.mv/91146>

51 Shaany, A., "Additional 16 Candidates Withdraw from Local Elections", Raajje.mv, December 5, 2020, <https://raajje.mv/91624>

52 PSN News, "Majority of Ballot Boxes Closed, Voter Turnout at 65%", April 10, 2021, <https://psmnews.mv/en/84456>

6. Challenges and Avenues for Civil Society Work

In addition to repressive government policies and mismanagement during the pandemic, the move from physical to virtual workplaces brought its own set of challenges for CSOs. The move to virtual workplaces impacted not only the work-life balance of human rights activists, but also impacted the work they could do on the ground. An interviewee mentioned the mental duress and exhaustion that working online inflicted, saying, 'Virtual meetings across time zones were exhausting and there seemed to be no work-life balance at all.'

The COVID-19 pandemic also increased the prevalence of mental health issues such as anxiety and depression worldwide, triggering an increase of up to 25 per cent⁵³. Civil society activists in the Maldives were not immune to it and furthermore, were not in a place to provide support to those in mental health crises. An interviewee spoke about limitations to providing support, saying, 'We could not provide mental health support in emergency cases as we were unable to leave our homes. In such cases, we resorted to calling the police for help — the first responders lacked the awareness and skills to respond to a mental health breakdown.'

The prolonged lockdowns restricted them to their homes, obstructing their ability to meet and organise. Another human rights worker noted that 'The pandemic hindered our ability to meet and organise within the group, let alone organise civic activities. This resulted in the group becoming dormant for most of the pandemic.' It also restricted the grassroots reach of CSOs, making it difficult to reach vulnerable populations. An interviewee commenting on the difficulty to work virtually noted

that 'their advocacy and outreach-related work came to a standstill as our work became limited to the online world'.

Transitioning to the 'new normal' made it quite difficult for organisations and individuals to access information from the State. Although the requests for information had previously also been met with hostility, during the pandemic, restrictions imposed under the Public Health Protection Act made it increasingly difficult to get information under the Right to Information Act. A participant reflecting on the state's refusal to part with information said that, 'Our work was already impacted by the extent of restrictions during COVID-19. The pandemic was used by State institutions to justify unmet deadlines on multiple occasions. In one instance, the State refused to email the information I requested and insisted that I visit them although COVID-19 restrictions were still in place. I had to get a permit from police and even pay for printing – when they could have just emailed me!'

Several organisations reported having to postpone their activities, beyond the delivery requirements, as it became increasingly difficult to conduct monitoring visits and consultations. Time-bound deliveries became impossible to meet. However, despite the challenges, the digital world also prompted CSOs and human rights defenders to engage with various social media platforms to synergise and organise themselves. Consequently, several online campaigns and conversations surrounding the pandemic were taken up on social media. Clubhouse - a social network based on voice - became an extremely useful tool to gather people for real-time dialogues on critical issues. Social media emerged as an alternative space for discussions on civic issues and allowed CSOs to persevere.

53 World Health Organization, "COVID-19 Pandemic Triggers 25% Increase in Prevalence of Anxiety and Depression Worldwide", March 2, 2022, <https://tinyurl.com/2dmtmhfu>

7. Conclusion

Similar to the trends in other South Asian countries, in Maldives, the COVID-19 pandemic was used as a pretext to trample on fundamental freedom, HRDs and CSOs. The state of public emergency was used to crack down on dissent and civil resistance. Apart from giving extensive unchecked powers to the Director General of Public Health and the police, the State not only used existing laws to repress civil society action but also passed new laws to further restrict fundamental freedoms.

The new laws were passed without any public consultation. These repressive laws were used to repress and persecute anybody critical of the State, with little to no space for redressal or accountability. It gave the State authorities unprecedented impunity to push back on the Maldives' hard-earned democracy and further shrunk the civic space.

8. Recommendations

1. Consider the application of similar requirements from the Civil Procedure Code for all State institutions that entails having clear protocols for emergency situations, and potential closure of physical operations so that public service is continued.
2. Conduct a thorough review of discriminative actions of the police in the application of penalties under the restrictions for gatherings.
3. NHRI must conduct a public enquiry to assess the violation of fundamental rights and discriminatory practices by the State and take action as required.

NEPAL: IMPACT OF COVID-19 ON HUMAN RIGHTS AND CIVIC SPACE

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1. Introduction

The public health emergency caused by COVID-19 in 2020, and quickly spread around the globe. The rights to dignified life and associated fundamental freedoms were suspended, and basic survival requirements were considered as the most important concerns after the declaration of COVID-19 as a pandemic. In Nepal, using the public health emergency as an excuse, the authorities imposed mobility restrictions banned in-person interactions and meetings; massive closure of public/civic spaces applied as COVID-19 response measures.

In Nepal, the first ever case of COVID-19 was detected on January 23, 2020¹. 312,699 persons were infected, and 3,211 persons died due to COVID-19, as documented until April 28, 2021². It was an alarming situation for the nation as such a

high number of people were exposed to COVID-19. In late April 2021, the government declared a second wave of COVID-19 infection. Within the short period of the second wave of COVID-19, 422,139 persons were infected, and 7,116 persons died due to COVID-19 as documented by the Informal Sector Service Centre (INSEC)³.

The Nepal government's early response involved a lockdown that commenced on March 24, 2020, completely banning public gatherings and civic mobility. The pandemic thus served as an opportunity to directly or indirectly violate various rights of citizens. Access to services was curtailed along with the closure of service providers due to the restriction orders issued by the government.

The government directed the services of health institutions towards the COVID-19 pandemic, which affected access to healthcare services for other

1 National Library of Medicine, "How an Outbreak of COVID-19 Circulated Widely in Nepal: A Chronological Analysis of the National Response to an Unprecedented Pandemic", July 20, 2022, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9321054/>

2 INSEC Online, "Update of April 28 Regarding COVID-19 Infection", April 28, 2021, <http://inseconline.org/en/news/update-of-april-28-regarding-covid-19-infection/>

3 INSEC Online, "The Situation of Corona Virus (COVID-19) in Nepal", April 28, 2021, <https://inseconline.org/en/covid-19/>

individuals in need. According to a news report, during the COVID-19 lockdown, patients with kidney disease encountered difficulties in receiving dialysis services in both government and private hospitals. Taking advantage of the situation, some health institutions improperly charged fees despite the government's declaration of free kidney dialysis for patients.⁴

The Constitution of Nepal guarantees the rights to health, education, freedom of association, and peaceful assembly as fundamental rights. However, common people faced difficulties due to restricted access to health services, forced termination of employees, irregularities in worker payments, lack of access to virtual education methods for underprivileged children, and travel blockades for those in need.

During the lockdown, Hom Bahadur Rana Magar—a migrant worker—died while returning home from Chitwan to Dhading (one of the major highway routes almost 100 kilometers long), on foot⁵. The inadequate approach to deal with migrant workers and the government's response to the returnees caused hundreds of workers to be stranded at the Indian border. The migrant workers did not get proper and timely information about the restriction on mobility by the government. Contrary to the principle of equal treatment to all, the government of Nepal rescued 170 Nepali nationals from Wuhan, China⁶.

As a precautionary measure, even the Nepal-India border was sealed but without proper preparation and prior information, causing grave difficulties to the people who were to return home. Having left

with no option to cross the border, three Nepalis swam across the Mahakali River from India to re-enter Nepal, but were detained by the security personnel from the Nepal Police, and Armed Police Force on March 30, 2020⁷. The police used the lockdown as means to employ excessive force on public and even frontline workers⁸.

Apart from these severities caused by the restriction on mobility and gathering, the government's unaccountability was highly prevalent in the overall handling of the COVID-19 crisis. Several workers have not received their wages and many workers were also made redundant due to disproportionate and not well managed imposition of lock down rules. For example, the Federation of Nepalese Journalists (FNJ) reported 18 incidents of violation of the right to free press, affecting 24 journalists. 4 per cent of journalists lost their jobs and 6 per cent were put on leave without pay. One third of the journalists were deprived of their salary for the last four months⁹.

Moreover, while the government claimed to have spent NPR10 billion (7.6 million USD) in COVID-19 response and preparedness by June 2020, it could not provide a breakdown of the expenses¹⁰. The government claimed to have incurred numerous expenses in responding to the COVID-19 crisis, but health workers were complaining about safety measures, including the scarcity of personal protective equipment (PPE) sets and other basic safety requirements. Their dissatisfaction was expressed through social media platforms, and Nepali youths initiated the 'Enough is Enough' campaign to protest the government's strategies and approach.

- 4 The Kathmandu Post, "Dialysis Service is Free But Patients Are Being Charged", March 14, 2021, <https://kathmandupost.com/health/2021/03/14/dialysis-service-is-free-but-patients-are-being-charged>
- 5 The Himalayan, "Man Walking from Chitwan to Dhading Dies on the Way", April 17, 2020, <https://thehimalayantimes.com/nepal/man-walking-from-chitwan-to-dhading-dies-on-the-way>
- 6 My Republica, "175 Nepali Nationals Finally Evacuated from Coronavirus-Hit Areas of China", February 16, 2020, <https://tinyurl.com/4fynbm2z>
- 7 Situation of Sudurpaschim province during Covid 19, http://inseconline.org/en/wp-content/uploads/2020/05/Sudurpachim_Province_DailyReport_May4.pdf
- 8 INSEC, "Situation of Human rights within Three Months of Lockdown", Accessed June 20, 2023, <http://inseconline.org/en/wp-content/uploads/2020/07/Situation-of-Human-Rights-within-Three-Months-of-Lockdown.pdf>
- 9 Federation of Nepali Journalists, "Report of joint survey by FNJ and Sharecast Initiatives, Nepal on Impact of COVID-19 on Journalism Sector", Accessed June 30, 2023, <http://www.fnjnepal.org/en/resources>
- 10 Ghimire, B., "Oli Refuses to Respond to Demand That Government Furnish Details of Rs10 Billion It Has Spent to Fight Covid-19", The Kathmandu Post, June 10, 2020, <https://tinyurl.com/2wwsatsr>

A report published by the Non-Government Organisation (NGO) Federation of Nepal presents that in June 2020, a few hundred youths who staged a peaceful protest, following social distancing protocols and respecting the public health safety measures near the Prime Minister's residence, were confronted by security personnel armed with water cannons and batons¹¹. The peaceful protest ended in chaos, inviting a much larger demonstration which aggravated the chaos and fear of the people, which directly hindered the people's rights to peaceful assembly by obeying the social, physical distancing measures as stated by the government.

The civil society activists, journalists, and human rights defenders, including youths, were unsatisfied with the government's response in several aspects. Firstly, they criticized the extension of the lockdown without ensuring proper testing, treatment, and tracking measures. Secondly, there was mismanagement of the migrant workers at the neighbouring borders. Thirdly, there were accusations against high-ranking government officials for mishandling the procurement of medical supplies from abroad. Lastly, the government was criticized for not adequately supporting local businesses that had suffered greatly and were struggling under the impact of COVID-19¹².

Furthermore, 'the 'Enough is E'ough' campaign questioned the quality of quarantine centers and isolation facilities. Additionally, it highlighted the government's failure to expand the hospital bed capacity in Nepal. The campaign also raised concerns about the working conditions of frontline health work criticising that they were not optimal. More over, it criticised the authorities for relying on cheaper and less accurate tests to determine the extent of the pandemic's spread¹³. Deaths caused

by the lack of oxygen supply in health facilities, unavailability of beds and intensive care services, inability to reach the hospital on time, and scarce ventilators shed light on the many problems in Nepal's healthcare system, and reflections were disseminated through such campaigns.

The pre-pandemic crisis situations including the 10-year-long armed conflict that started in 1996 and ended in 2006 in Nepal, have proven that during emergencies, both urgent and routine government functions continue to occur, but often excluding or limiting the participation of and consultation with human rights defenders (HRDs). This creates challenges in defending human rights and ensuring good governance. Additionally, service providers faced risks and difficulties during the COVID-19 pandemic.

The past 3 years of the pandemic have majorly impacted the lives of all citizens in Nepal, especially health workers who have been affected by the mobility restrictions and were constantly obstructed from doing their work. For instance, Chandra Prakash Khanal, a para-medical worker, was beaten by the police on April 16, 2020, despite showing his official identity card during the curfew. Dr. Uttam Karki, Director of the Public Health Laboratory of Bagmati Province, was molested by a self-claimed volunteer¹⁴. Inferring from these incidents, it is safe to say that the government in Nepal neither devised appropriate measures for the protection of frontline health workers nor deployed any proper team to investigate and prosecute such cases.

When the pandemic began, the government established quarantine centers across the country but the facilities lacked basic services such as food and shelter and failed to manage 24-hour ambulance

11 USAID, "COVID-19 & Nepali Civil Society Organizations: Impact, Responses & Opportunities", August, 2021, https://pdf.usaid.gov/pdf_docs/PA00XX8M.pdf

12 Thomas M., "Nonviolent Youth Protests in 2020 against the Nepal Government's Handling of the Covid-19 Pandemic", Centre for Social Change, April 25, 2022, <https://socialchange.org.np/nepa-youth-protest-2019/>

13 Ibid.

14 "Situation of Human Rights during the Three Months of Lockdown", Accessed September 16, 2022 http://inseconline.org/np/wp-content/uploads/2020/11/3-Months-of-Lockdown_10-July-2020.pdf

services, and the availability of emergency medical equipment such as cylinders filled with oxygen¹⁵. The quarantine centers did not meet the expected standards, and a large number of migrant workers who wanted to return home was deprived of an adequate response in the quarantine facilities.

Nepal's Constitution grants all citizens equality and non-discrimination. However, Nepal faced vaccine inequality and discrimination. By the end of July 2021, only 3.3 million persons out of 30 million eligible people were vaccinated¹⁶. The government of Nepal and the United Nations initiatives did not fulfill their stated mandates to ensure equitable access to the vaccine, especially for those on the frontlines dealing with the day-to-day lives of the general population. The pandemic also revealed vaccine inequity as a key challenge,¹⁷ stated by the Office of the High Commissioner for Human Rights as a serious human rights concern to be discussed within the jurisdiction of the International Covenant on Economic Social and Cultural Rights (ICESCR).

In this context, the following study aims to explore how Nepal's mitigation efforts have hindered human rights, fundamental freedoms, and civic space in the country. Given that movement restrictions compelled people to stay at home, and obstructed activists from demanding government accountability to protect basic and fundamental human rights, it is perhaps important to understand what happened with human rights and fundamental freedom, including the rights of frontline workers and people in Nepal.

2. Methodology

The study aims to evaluate the Nepal government's strategies and approaches to respond to the COVID-19 pandemic and the consequent human rights concerns and implications that arose out of it. In doing so, the report has ranged the duration of the study from January 2020 to the second wave of COVID-19 infection in September 2021.

The scope of the study delimited the strategies for data collection and analysis with reviews of secondary data and information conducted through reports published by civil society organisations (CSOs), government, and various human rights institutions. To assess the breadth and depth of civic space restrictions, hindrance for HRDs in their works and their impact over time, the study has focused on policies that imply constraints on three key civil rights: the freedoms of expression, association and peaceful assembly, right to information (RTI), safety measures of the people.

The documents, decisions and initiatives undertaken by the Nepalese government to respond to COVID-19 risks were reviewed and analyzed by contextualizing their relevance while dealing with human rights issues. The reports published by the National Human Rights Commission of Nepal, other thematic national human rights institutions and other stakeholders are also analysed for ensuring the quality standard of the report.

3. Overview of the Human Rights Situation in Nepal

During the period of lockdown, cases of violence against women and girls, caste-based discrimination increased in Nepal. The government proposals in law reform threatened the civic space. The

15 Relief Web "Rapid Assessment on Impacts of COVID-19 on Returnee Migrants and Responses of Local Governments of Nepal", August 22, 2020, <https://tinyurl.com/4yfxzatk>

16 INSEC Online, "The Situation of Coronavirus (COVID-19) in Nepal", Accessed June 30, 2023, <https://inseconline.org/en/covid-19/>

17 OHCHR, "United Nations Human Rights Report 2021", Accessed June 30, 2023, https://www.ohchr.org/sites/default/files/2022-06/OHCHR_Report_2021.pdf

widespread use of online platforms and digital tools during the COVID-19 pandemic has highlighted the digital divide as a significant human rights concern, creating disparities among people.

The Informal Sector Service Centre (INSEC)'s report on 3 months of lockdown from April to June 2020 highlights that 476 women and 284 girls were victims of rape¹⁸. The report further presents 12 people as victims of caste-based discrimination. The same number reported by INSEC from January to March 2021 is comparatively less.

During this period, the government elevated the lockdown. The Human Rights Situation Report published by INSEC in this period presents that 141 women and 215 girls were victims of rape and three were victims of caste-based discrimination¹⁹. The variation in the specific rights violation doesn't necessarily reflect the State's engagement, but it indicates the inappropriate approach of governance and monitoring by the duty bearers, allowing the number of cases to rise during the period of lockdown and restrictions.

According to a report by Human Rights Watch, births in health facilities decreased by more than half during the 4-month lockdown period in 2020. This had a negative impact on maternal and infant health, which was considered a significant achievement in the millennium development goals, prior to the pandemic. Additionally, the rate of neonatal deaths also increased²⁰. On the other hand, the government failed to protect the persons dying from the COVID-19 infection and associated causes. Unfortunately, many people died during both the first and the second wave of the COVID-19 pandemic owing to massive inaccessibility of health services, limited awareness, and movement

restrictions. 8 COVID-19 patients treated at the Pokhara-based Western Regional Hospital died after the hospital had run out of medical oxygen on May 28, 2021²¹.

Human Rights Watch also presented in its report that daily wage labourers and farmers suffered from the violation of their right to livelihood and other economic rights. Such scenarios indicated that people at the marginalised status faced difficulties in livelihood due to the government-imposed lockdown and were neglected by the government. The report further presents the miserable scenario of the internal migrants forced to walk hundreds of kilometers home from the cities after losing their jobs, and migrants from neighbouring countries stranded at the borders after entry points were closed²². There was clear discrimination from the State between those who returned by road and those who returned via air. For those who returned via air, the government managed transportation from the airport to the hotel, but those who returned via road were forced to walk to reach the quarantine centers.

While discussing human rights violations and the issue of impunity, the Human Rights Watch report highlights that systematic impunity for human rights abuses continues in Nepal, extending to ongoing violations. This undermines the principles of accountability and the rule of law in the country. Data show that human rights abuses targeted against the marginalised groups increased by 18 percent in 2021 according to the Nepal police data²³. The report also highlights that the police officials were often reluctant to conduct proper investigations, and victims did not receive adequate protection from retaliation.

18 "Situation of Human Rights during the Three Months of Lockdown", Accessed September 18, 2022, http://inseconline.org/np/wp-content/uploads/2020/11/3-Months-of-Lockdown_10-July-2020.pdf (Nepali version)

19 INSEC, "Human Rights Situation Report", May, 2021, <https://insecresources.org.np/pages/view.php?ref=91531&k=4759332682>

20 Human Rights Watch, "Nepal Events of 2020", Accessed June 30, 2023, <https://www.hrw.org/world-report/2021/country-chapters/nepal>

21 Pariyar, D., "Eight COVID-19 Patients Die Due to Delay in Oxygen Supply", May 29, 2021, <https://kathmandupost.com/gandaki-province/2021/05/29/eight-covid-19-patients-die-due-to-delay-in-oxygen-supply>

22 Human Rights Watch, "Nepal Events of 2020", Accessed June 30, 2023, <https://www.hrw.org/world-report/2021/country-chapters/nepal>

23 Available at https://www.hrw.org/news/2022/01/13/nepal-authorities-are-failing-protect-citizens_, Accessed on September 15, 2022

The State agencies, including the judiciary, also failed to adequately protect the victims' rights to justice during the COVID-19 period. The Nepal Human Rights Year Book 2022 reveals that only 3 per cent of the cases registered in the court were resolved in 2021.²⁴ The court proceedings in 2021 were closed due to COVID-19 instead of incorporating the use of digital platforms or any other possible measures to respond to the cases registered in the court. Such actions were considered delayed justice and therefore, human rights violations.

It is clear that the Nepal government failed to fulfill the citizens' right to health services, which is specified as a fundamental human right by the Universal Declaration of Human Rights 1948, the Constitution of Nepal 2015 and Public Health Services Act. Several cases of such concerns have, in fact, been documented and published by the National Human Rights Commission (NHRC) of Nepal, whereas civil society organisations have repeatedly indicated the violation of the International Convention on Economic, Social, and Cultural Rights. The function of the governments (federal, provincial, and local) became less adequate to protect the rights of the general public during the emergency caused by COVID-19. Violations of economic rights were one of the major concerns in Nepal.

The COVID-19 pandemic is a global concern, having affected the livelihoods and rights of the people who are at the bottom of the economic ladder. Existing poverty has further deepened among the most vulnerable, including the impoverished, marginalised communities, and minority groups. Moreover, the division between those in positions of power and the general population has widened. Discrimination has been observed within service-providing agencies in the realms of healthcare and education. The increasing reliance on digital platforms has exacerbated the digital divide, limiting access to digital learning platforms for children and

increasing concerns regarding their protection from potential violence during the pandemic. Despite the government's imposition of lockdown measures to safeguard people's rights, it has failed to protect the rights of its citizens and, instead, enforced repressive laws and policies under the pretext of the COVID-19 pandemic.

4. Repressive Laws and Policies:

4.1 Repressive Laws or Policies That Existed Pre-Pandemic and Continued During the Pandemic

Though Nepal's 2015 Constitution guarantees the right to freedom of association and peaceful assembly as a fundamental right, it also comprises a limitation through Article 51 (j) (14), which outlines the policy of a 'single door system for the establishment, approval, operation, regulation, and management of community-based and national or international non-governmental organisations and to involve such organisations only in the sectors of national need and priority, while making investment and the role of such organisations transparent and accountable.'²⁵

As a result of this limitation, HRDs and CSOs have been facing multiple setbacks from time to time by the regulating authorities. For instance, the CSOs were forced to divert their resources to facilitate COVID-19 mitigation strategies. The Social Welfare Council (SWC), the regulating authority for the civil society organisations, published a notice and asked non-governmental organisations to divert their ongoing projects to the COVID-19 response initiative of the government²⁶. Such orders and notices were forced actions towards shrinking civic engagement as per their commitment to society.

Civil society organisations including media and human rights defenders have, in fact, been advocating for the amendment of social organisations related

24 Nepal Human Rights Year Book 2022: Executive Summary. Available at https://www.insec.org.np/wp-content/uploads/2022/02/NHRYB2022_english.pdf

25 The Constitution of Nepal, <https://lawcommission.gov.np/en/wp-content/uploads/2021/01/Constitution-of-Nepal.pdf>

26 <https://www.swc.org.np/pages/562> (Nepali version)

existing laws such as the Social Welfare Act 1992, Association Registration Act 1977, and relevant guidelines adopted by the Social Welfare Council and respective line ministries who have been monitoring the work of CSO and NGOs. The available laws have contradictory provisions to the 2015 Constitution and international standards. This is mainly because these laws have been creating hurdles for the CSOs in receiving their programme approval, tax clearance, and tax exemption as per the legal guarantee.

After the first general election in 2017, the Nepal government started drafting or proposing the 'Social Organisation Act' in 2019 and 2020, which projected the limitation by defining the eligible founders and members, mandatory registration, registration barriers, interference with internal governance, restrictions on activities, barriers to access to resources, severe penalties²⁷. The government of Nepal proposed a National Integrity Policy, whose aim is to rein in non-governmental organisations and international NGOs working in Nepal²⁸. Similarly, several regressive approaches including the executive order from the Ministry of Home Affairs, were imposed just before the COVID-19 pandemic. The approach of the government of Nepal was to limit the civic space by promulgating restrictive legal and policy measures.

The NGO Federation of Nepal, Federation of Nepali Journalists, and various civil society organisations collectively advocated against repressive policies such as the National Integrity Policy, National Human Rights Act Amendment Bill, Social Organisation Act, and other proposed laws. One of the international non-government organisations working for the advocacy of civic space around the world, International Centre for Not-for-Profit Law (ICNL) presents that the Social Welfare Council's guideline

has created restrictions to the organisations for their activism to advocate for human rights and social justice in Nepal²⁹, which is a step towards shrinking civic space in Nepal.

4.2 Laws, Policies, and Regulations Introduced During the Pandemic That Had Implications on Civic Space and Human Rights

The Government of Nepal introduced the following policies and decisions, which directly hindered the human rights and civic space in Nepal:

- In April 2020, the Ministry of Health launched minimum standards for the establishment of COVID-19 testing laboratories and allowed private laboratories to conduct testing. The decision of the government opens the health environment to get services from both government and private hospitals. However, the decision directly violated the accountability of the government to ensure the proper mitigating measures and access of poor people to government health services. The Constitution of Nepal has guaranteed rights to health as fundamental rights. The prime responsibility of the government is to ensure basic services to their citizens, even in a crisis. By allowing the private sector to conduct the COVID-19 test and treatment, the government tried to pull its hand out from the responsibility and it increased the health treatment cost of the people. The changes through the minimum standards promoted commercialisation and reduced government share in testing and treatment for mitigating the risks of life-threatening situations. Realizing the context and the constitutional, and legal guarantees, the government of Nepal decided to bear all expenses involved in the testing and treatment of COVID-19 patients in all government-owned hospitals across the

27 British Council "Civil Society in a Federal Nepal: A Landscape Study", November 2019, https://www.britishcouncil.org.np/sites/default/files/nepal_cso_landscape_study_final_report.pdf

28 Pradhan, T., "Integrity Policy Draft Draws NGOs' Flak", The Kathmandu Post, April 15, 2018, <https://kathmandupost.com/national/2018/04/15/integrity-policy-draft-draws-ngos-flak>

29 British Council "Civil Society in a Federal Nepal: A Landscape Study", November 2019, https://www.britishcouncil.org.np/sites/default/files/nepal_cso_landscape_study_final_report.pdf

country. It reversed its earlier decision to open the treatment from private hospitals after the Supreme Court rejected the Ministry of Health and Population's request to review the order to provide free treatment to the COVID-19 infected persons.

- The Cabinet meeting had decided to test and provide free treatment only to those who can't afford to pay, and to single women, persons with disabilities (PwDs), frontline health workers, security personnel, and cleaning staff. The Ministry of Health and Population enforced the decision from October 17, 2020. The decision has classified citizens and promoted the commercialisation of health facilities, which contradicts to the Constitutional guarantee of health as a fundamental right and approach of universal coverage in Nepal.
- In November 2020, with incidents of COVID-19 infected individuals not following strict isolation measures and roaming around scot-free, the government decided to entrust residents with the responsibility of monitoring the infected. A monitoring team formed in each locality was supposed to address problems faced by the infected and bar them from coming out for 14 days. Such mobility restrictions controlled the mobility of people but the government did not provide the necessary supplies to the family members whose mobility was barred due to the COVID-19 infection. Such types of immature decisions directly controlled civic rights and the fundamental freedom to access basic services.
- The government of Nepal, on November 5, 2020, endorsed the 'School Operation Framework-2020 in the context of COVID-19' that provided all 753 local governments with the authority to allow schools—under their jurisdiction—to reopen or shut after carefully reviewing the COVID-19 situation and the capacity of schools. The School Operation Framework allowed schools to use an

alternative medium of schooling. Some schools operated through digital platforms such as Zoom and Microsoft Teams, but the majority of rural children did not have access to the internet or laptops, smartphones. This modality had contributed to promote a digital divide among the children, and discriminated against the marginalised and poor children and directly impacted their right to education.

- In May 2021, the Government of Nepal approved an ordinance 'The COVID-19 Risk Management Ordinance', to strengthen the COVID-19 prevention and response mechanism, which paved the way for the government to impose a state of emergency in the country to contain further spread of COVID-19 pandemic and mobilise the Nepal Army if deemed necessary. The government has a right to approve the ordinance, however, it restricted the movement and liberty of people. Furthermore, the ordinance has a provision to declare the state of emergency for controlling the rights of the people. The scope of the ordinance was to control the spread of the pandemic, but instead, it restricted peoples' rights.
- Until the issuance of this ordinance, the Contagious Disease Act was guiding all the decisions made by the Government of Nepal concerning the COVID-19 pandemic management and control. The Contagious Disease Act had provisions of a 1-month jail term and/or NPR 100 (0.75 USD) fine for those who defy the government order whereas, the ordinance made 1-year imprisonment and/or NPR 500,000 (3790 USD) fine. Additional fines provisioned in the ordinance include NRS100 every time people come to a public space without wearing a mask, NPR 200 (USD 1.5) every time they travel during the lockdown NRS 1,000 for two-wheelers, and NPR 2,000 (USD 150) for four-wheeler vehicles for defying the travel restriction. Instead of increasing the

penalties and punishment in the new ordinance, the government could have come up with an awareness-raising plan on health protocol for the people, so that people themselves become aware of it and follow the protocol.

- In June 2021, the government tabled an ordinance against those who attack healthcare workers, which will carry a fine of NPR 200,000 (USD 1500) and a jail term of 4 years. The ordinance was enacted towards the protection of health workers which positively contributed to the protection of the rights of health workers. The above-mentioned decisions and policy proposals were brought out by the government in addition to the nationwide lockdown which started in March 2020 for the first time, and in April 2021 for the second time. These lockdowns were however imposed without any proper response mechanisms for curbing the spread of the virus, thereby, severely limiting mobility and causing grave human rights violations, especially for those belonging to the marginalised communities, migrants, and employees working in the unorganised sectors. The government's decision to introduce a lockdown from March 10, 2020, without sufficient preparation and planning, had significant consequences. It led to daily wage labourers in urban areas losing their jobs and being trapped away from their homes without any food or money. Witnessing these deplorable conditions and the ongoing economic crisis, it became evident that immediate action was necessary³⁰.

INSEC raised special concerns about hundreds of Nepalis who were returning to their home country, were forced to quarantine, or were left stranded in different bordering cities and localities on the Nepal-India border, as well as those facing difficulties due to the Nepal Government's COVID-19-induced lockdown measures³¹. The National Human Rights Commission in Nepal (NHRCN) criticised the government for their unilateral move towards law-making by limiting or excluding the experts, larger civil society organisations, HRDs, and others. In its annual report 2020, the NHRCN stated that 'though there is government elected by the people, it seems to have failed its own commitment in some cases for the protection and promotion of human rights.

People raised their voices that some bills introduced in the previous year on behalf of the government have raised questions over the intent of the government. The bills designed to amend and integrate laws relating such as the Media Council Bill and the National Human Rights Commission Bill have not met international standards. The Parliamentary Committee for Development and Technology has passed the Media Council Bill that curtails freedom of expression.³² The NHRCN has, in fact, requested the government to be more sensitive and adopt favorable measures and acknowledge the concern of the stakeholder properly.

It can be concluded that the laws, policies and regulations introduced during the pandemic had a negative impact on fundamental freedoms and civic space especially on the freedom of expression, association and peaceful assembly. These also hinder the effective functioning of human rights defenders and civil society organisations.

30 Frontiers, "Combating the COVID-19 Pandemic: Experiences of the First Wave from Nepal", July 12, 2021, [Frontiers | Combating the COVID-19 Pandemic: Experiences of the First Wave From Nepal \(frontiersin.org\)](https://www.frontiersin.org/articles/10.3389/fpubh.2021.682411/full).

31 INSEC Online, "NSEC Appeals the Government of Nepal for Proper Management of Nepali Citizens Stuck at Nepal-India Border", April 4, 2020, <https://inseconline.org/en/press/insec-appeals-the-government-of-nepal-for-proper-management-of-nepali-citizens-stuck-at-nepal-india-border/>

32 National Human Rights Commission "Annual Report 2020", Available at, https://www.nhrcnepal.org/uploads/publication/Annual_Report_FY_2019-20_compressed.pdf

4.3 Existing Laws, Policies, and Mechanisms to Challenge or Mitigate the Implications of Repressive Measures Introduced During the Pandemic

The Article 17 of the Constitution of Nepal, including the preamble and provisions guaranteed the protection and promotion of human rights guarantees an enabling environment for civil society by protecting freedom of opinion and expression, as well as the freedom to form associations and peaceful assembly³³. These constitutional provisions stand in correlation to the state's obligations towards international treaties, conventions, Universal Declaration of Human Rights, and the UN Declaration on Human Rights Defenders, all of which together ensure the promotion of an enabling space for human rights defenders and civil society.

The Universal Declaration of Human Rights, guarantees human rights for all and that is applicable for HRDs as well. For instance, Articles 19³⁴ and 28³⁵ refer to the rights of opinion and expression and rights to peaceful assembly that is not only for a particular group but for all, including civil society organisations and HRDs. The Supreme Court of Nepal had made several decisions during the COVID-19 emergency for the protection and promotion of the rights of the people including those who are working in the frontline i.e. human rights defenders, civil society activists, and health workers.³⁶

The Court played a significant role in holding the Nepal government accountable for its constitutional obligations to ensure the rights of the people. This includes the right to access healthcare, protection for migrant workers who wish to return home, safeguarding the rights of health workers and general workers, and ensuring livelihoods for all.

The NHRCN through its collaboration with the Nepal Bar Association, Federation of Nepalese Journalists, and NGO Federation of Nepal raised several questions of accountability of the government while dealing with the pandemic. It issued press statements assuring the rights to health, freedom of association, peaceful assembly, rights to mobility, rights to food, and basic care of the marginalised people during the pandemic. These initiatives and measures were taken by national institutions and civil society to protect the rights of the people.

When discussing policies and principles, Nepal, as a state party to the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR), has an obligation to protect the rights to mobility, freedom of expression, association, peaceful assembly, and the basic needs for livelihood. However, the effectiveness of international standards and compliance has been reduced due to the global consequences of the COVID-19 pandemic. Nevertheless, the Constitution supports survivors in seeking legal remedies through the active role of the Supreme Court. To promote human rights activism, coordination and collaboration between civil society and national human rights institutions have been encouraged, aiming to strengthen the question of accountability of the State and enhance civic initiatives in defending and expanding the civic space in Nepal.

4.4 Initiatives, Good Practices, and Success Stories

During the pandemic, Nepal's civil society formed a coalition for conducting continuous monitoring and strengthening networks that facilitated the development of appropriate response to the crisis. They also ensured the timely raising of concerns regarding the protection and promotion of human rights. For instance, a network was formulated

33 The Constitution of Nepal, Available at <https://lawcommission.gov.np/en/wp-content/uploads/2021/01/Constitution-of-Nepal.pdf>

34 Every person has the right to opinion and expression. It also includes the right to express, search and advocate the information without any barrier.

35 There is right of provision for every person to acquire rights mentioned in this Declaration.

36 International Commission of Jurists, "Nepal: The Government Must Implement Supreme Court Orders to Protect Health in Time of COVID", February 9, 2022, <https://tinyurl.com/4rrkd489>

between the NHRCN, Nepal Bar Association, Federation of Nepali Journalists, and NGO Federation of Nepal to monitor the human rights situation in the complex COVID-19 context. Federal, provincial and district-level human rights monitoring and coordination committees were formed. Similarly, rehabilitation of people with mental health problems and people living on the streets, and provision of food, shelter, clothing, health, and education were also carried out³⁷. This coalition has raised several concerns about the State's accountability for the ongoing humanitarian issues in the country.

Continuous engagement of civil society together with NHRCN has, in fact, made the institutions accountable for the concerns of human rights defenders. For instance, when media houses removed the journalists from their jobs and did not pay them for their work during the COVID-19 crisis, the Supreme Court—on September 20, 2020—decided on the assurance of the pay of journalists as per the Shramjivi Patrakar Act. This decision made it easier for the government and other stakeholders to force the management of media houses to set up safety measures for journalists. Besides, the human rights commission and civil society supported for those journalists to file their case in the court and played an important role in supporting them for their advocacy efforts.

Despite challenges and attempts to tighten civic liberty, youths mobilised the virtual space to replace the offline space for their campaign against the government's mishandling, suspicious governance in equipment purchase, and controlling peoples' rights. The Nepalese youth announced the 'Enough Is Enough' campaign to physically demonstrate their dissatisfaction with the government's mishandling during the pandemic. This can be viewed because of the Nepal Government's response to the COVID-19 crisis. The youth of Nepal got themselves recognised as civic leaders, which is a good indication for rule of law, democracy and human rights. The larger youth

community who are vocal against the malpractices and are pro-active on social media, became human rights defenders due to the restrictions imposed by the government during the COVID-19 crisis.

The campaign organised by hundreds of urban youths had mainly 6 demands: PCR testing for everyone who is at risk and infected, a 4-tier triage approach for the vulnerable population, proper protection measures for frontline health workers, and legal action against those stigmatising people at risk, relief for people most affected by the lockdown, and transparency and accountability in the COVID-19 relief budget allocation. The active engagement of youths in addressing contemporary issues, especially during the pandemic, holds the government accountable. Their commitment to protecting the rights of the people symbolises the vibrancy of the human rights community in Nepal.

5. Key Findings

COVID-19 brought about a crisis, uncertainty, fear, and severe strain on Nepal's healthcare system. The pandemic posed threats to human civilisation, socialisation, modern development, and the governance system, including its socio-economic dimensions. The government's approach to handling the COVID-19 situation imposed limitations and additional challenges on the lives of people and frontline workers who aimed to assist those in need during the pandemic.

Even before the COVID-19 pandemic and its resulting measures, the Government of Nepal had already begun cracking down on the human rights movement in the country. And the declaration of lockdown only made matters worse especially for the migrant workers, marginalised population, daily wage labourers, and human rights defenders. The government in fact considerably failed to ensure the rights of its citizens as specified in the constitutions and Nepal's international commitments.

37 National Human Rights Commission (Annual Report 2021) Available at, https://www.nhrcnepal.org/uploads/publication/Annual_Report_Synopsis_2020-21_compressed.pdf

The only manifestation of the government's obligation towards its people emerged through the provision of free COVID-19 treatment for patients, following the Supreme Court's order. However, this provision was met with limited trust and accessibility among the people.

The pandemic also created additional challenges for civic engagement and amplified existing tensions concerning the state of human rights and ongoing restrictions on activism. Based on the issues discussed in this study, the researcher has derived the following key findings:

- a. The government of Nepal had applied inappropriate measures before imposing the lockdown and restrictions orders on public life. Due to the lockdown declaration, the migrant workers, marginalised population, daily wage labourers, human rights defenders, and professionals faced severe consequences due to restrictions. The government did not provide their proper attention and could not ensure the mitigation measures to ensure the rights as per the constitution and its international obligation. However, the arrangement for free treatment of COVID-19 patients following the Supreme Court order which was met with limited trust and accessibility among the people tried to reflect the constitutional guarantee practiced by the government.
- b. The space for human rights defenders and civil society activists for their advocacy work and engagement has been shrinking in Nepal over the past recent years and has been exacerbated by
 - c. the pandemic. There is thus an urgent need for the creation of an enabling environment for HRDs and civil society organisations to continue their contribution towards the fundamental freedom and civic spaces in Nepal.
 - d. Owing to the governance and attitudes of the policymakers and stakeholders—which include government agencies—towards human rights defenders, even the legal space has not changed after the pandemic.
 - e. Spontaneous unity among the civil society alliances, networks and coalitions shown during the COVID-19 crisis to question the malpractices and governance of the federal, provincial and local governments.
 - f. As a watchdog mandate, the national human rights institutions' role is crucial to make the government accountable and to follow the constitutional provision and international standards while dealing with the pandemic.
 - g. Due to the non-transparent role of the government, challenges arise in terms of coordination and collaboration when dealing with the pandemic. The government fails to gain the trust and confidence of civil society organisations, human rights defenders, the media, and the international community, all of whom are willing to assist in overcoming the pandemic.

6. Recommendations

The study has identified several actors responsible for promoting an enabling environment for human rights defenders, as well as for the protection and promotion of human rights during the crisis. In this context, the study has made the following recommendations for different institutions to improve the status quo and promote a human rights-friendly environment in Nepal. And it could further result in strengthening democratic norms and values to ensure fundamental freedom and civic space and due diligent governance in the country.

Recommendation for the State Institutions

- » The government should focus on strengthening capacity development for responding to the crisis and for an effective post-pandemic recovery. It should collaborate with human rights organisations and civil society activists to retain trust and credibility instead of restricting fundamental freedom and civic space at the time of crisis.
- » The government has committed to the people of Nepal to work for the improvement of the country's economy by creating decent job opportunities and increase spending on social sector including health care and education so that the country will be more resilient if a similar kind of public emergency like COVID-19 pandemic situation arises in the future.
- » Given that the parliament became less functional during the COVID-19 pandemic, the study recommends that federal and provincial parliamentarians promulgate policies that will make the government more accountable for ensuring effective governance and continuance of democracy by expanding civic liberty and human rights.
- » The National Human Rights Commission of Nepal should strengthen its engagement and collaboration with the thematic human rights institutions for their effective functioning to ensure the protection and promotion of the rights of the marginalised and excluded population. Furthermore, it should capacitate the human rights defenders for their effective mobilisation through enhancing their documentation and leadership skills to move forward with their evidence-based advocacy.

Recommendation to the International Community

- » The international community should advocate for the engagement of human rights defenders and civil society organisations in crisis response as per their capacity, and to communicate with the government for the arrangement of the protection measures for the human rights defenders.

- » The international community can share the best practices in handling the COVID-19 pandemic of other countries with the Nepal government, human rights defenders and civil society organisations as part of the learning for future planning.
- » The international community, especially diplomatic missions and donor agencies should revise their policies and be flexible and open to revise the programmes and budget to support the Nepal government as well as civil society and human rights organisations to overcome crises like the COVID-19 pandemic.

Recommendation to Civil Society Organisations

- » Be vigilant of the role of government and play an active watchdog role for the protection and promotion of fundamental freedom and civic space of the people especially to marginalised and excluded groups.
- » Enhance the capacity of CSOs and HRDs on documentation, evidence-based advocacy and crisis management keeping in mind such crises in future.
- » Engage with the government and relevant stakeholders for constructive feedback, especially to advance the existing laws and policies that are able to deal with the crisis in future without curtailing the fundamental rights of the people.
- » To keep CSOs and HRDs vibrancy in Nepal, continue dialogues and collaboration between and among civil society alliances, networks and coalitions.
- » Organise knowledge sharing learning sessions together with government, NHRIs, various missions and donor agencies to help them plan future strategies to cope with such crises.
- » Help to educate the people at the grassroots level on their legal, constitutional and political rights

PAKISTAN: IMPLICATIONS OF REPRESSIVE MEASURES RELATED TO COVID-19 ON HUMAN RIGHTS AND CIVIC SPACE

BY HAROON BALOCH & FATIMA KHALID
BYTES FOR ALL, PAKISTAN

1. Introduction

For many years, governments have been restricting freedoms and civil liberties, invading people's privacy, imposing repressive laws and measures. These practices have however, increased all the more in the past two years with administrators disguising their actions behind the urgent need to monitor and contain the spread of COVID-19. The Office of the United Nations High Commissioner for Human Rights (OHCHR) has, in fact, drawn attention to the way COVID-19 responses devised by different governments—for the protection of the people—have instead been filled with unacceptable constraints on their fundamental liberties like the right to freedoms of speech, association and peaceful assembly; all of which have a negative impact on civic space as well as democratic principles¹.

But lest we forget, civic space is the very foundation of a free and democratic nation, allowing individuals and civil society organisations to liberally engage in social and political arenas, and raise awareness

about important issues like the protection of human rights while also holding governments accountable. The implementation of repressive measures to curb the spread of COVID-19 in Pakistan has had a significant impact on human rights and civic space. The measures include restrictions on public gatherings, curfews, and lockdowns, which have led to limited access to information, restrictions on freedom of peaceful assembly and expression, and a decline in economic activity.

Additionally, there have been reports of arbitrary arrests, detentions, and violence by law enforcement agencies, further violating the rights of citizens. The COVID-19 pandemic has also highlighted existing inequalities and discrimination, particularly affecting marginalised communities. Overall, the COVID-19 pandemic and related repressive measures have created a challenging environment for the protection and promotion of human rights, civic space and fundamental freedom in Pakistan.

¹ ReliefWeb, "Statement by Nada al-Nashif UN Deputy High Commissioner for Human Rights: Panel on Good Governance in Protecting Human Rights During and After COVID-19 Pandemic (HRC Res. 45/9)", June 22, 2022, Retrieved August 1, 2022, <https://rb.gy/2fvkz>

The natural growth of civil society in Pakistan has been thwarted persistently, even before the outbreak of the COVID-19 pandemic. Since Pakistan's independence from the British in 1947, the situation of civil liberties and civil society organisations (CSOs) has been characterised by both progress and setbacks². Initially, the country experienced a period of political openness, with a vibrant civil society and active media. However, this changed with the imposition of military rule in the late 1950s, which was marked by the suppression of dissent, and restrictions on civil liberties³.

Following the restoration of democratic rule in the late 1980s and 1990s, there was a resurgence of civil society activity and an improvement in the situation of civil liberties. However, this progress was again reversed in the early 2000s, with the introduction of restrictive laws and increased state surveillance, resulting in a decline in civil society space⁴. In recent years, there has been a growing concern about the shrinking of civic space in Pakistan, with increasing restrictions on freedom of expression and peaceful assembly, and a decline in media freedom⁵.

This situation has perhaps worsened with the Ministry of Interior's new guidelines—announced in November 2013—which made the registration process of civil society organisations even more strict, requiring them to provide comprehensive details about their sources of funding⁶. Owing to its repressive characteristic, the Ministry's directive in fact, shortly after its implementation resulted in the issuance of expulsion orders to at least nine⁷ international non-governmental organisations (INGOs) with nearly thirty organisations warned to be closed down in case they failed to comply for registration as specified under the new law⁸.

The new guidelines imposed by the Ministry of Interior made the process of registering CSOs more difficult, which created a restrictive environment for these organisations. The requirement for organisations to provide detailed information about their funding sources was viewed as intrusive and potentially harmful to the organisations and their work. The immediate effect of the new guidelines was the expulsion of some INGOs, which raised concerns about the future of CSOs in the country. The warning issued to other organisations to comply with the new registration requirements also added to the uncertainty and fear among the sector.

Another such hindrance—for people in Pakistan to freely express themselves—was posed by the introduction of Prevention of Electronic Crimes Act (PECA), in August 2016. The PECA is a law in Pakistan aimed at preventing and prosecuting crimes committed through the use of electronic devices and communication networks. The law contains provisions regarding cybercrime, including hacking, identity theft, cyberstalking, and the spreading of false information. However, due to its argued impact on human rights and the protection of citizens' digital rights it is often denounced as 'an incoherent mix of anti-speech, anti-privacy and anti-Internet provisions.'⁹

Certain provisions in the law, such as those related to censorship and the restriction of online speech, violate freedom of expression and the right to access information that has been provided in the Constitution. This is mainly because the law has been drafted in such a way that makes it difficult to decipher what exactly amounts to criminal conduct. PECA's clause 20 has thus, adopted a notorious reputation for its misuse against the human rights

2 Dr. Bhattacharya, S., "Civil Society in Pakistan: Functioning and Challenges", April 2016, ResearchGate, <https://tinyurl.com/bdz6c4xe>

3 Yadav, V., "Resilience and Decline: Civil Liberties in Pakistan", April 2021, Oxford Academic, <https://tinyurl.com/23ycxuxa>

4 Asian Development Bank, "Overview of Civil Society Organisations: Pakistan", May 2021, <https://tinyurl.com/bdz9w32a>

5 Freedom House, "Freedom in the World 2021: Pakistan", <https://freedomhouse.org/country/pakistan/freedom-world/2021>

6 Baloch, I., Economic Affairs Division, Government of Pakistan, "Policy of Regulation of Organisations Receiving Foreign Contributions", November 25, 2013, <https://tinyurl.com/2eyv93v8>

7 Gishkori, Z., "Nine INGOs Refused Registration", November 6, 2015, The Express Tribune, <https://tribune.com.pk/story/986093/nine-ingos-refused-registration/>

8 Financial Times, "Pakistan Orders Expulsion of 29 International NGOs", <https://www.ft.com/content/15d38124-de54-11e7-a8a4-0a1e63a52f9c>

9 Danny O'Brien, "The Global Ambitions of Pakistan's New Cyber-Crime Act" (Electronic Frontier Foundation, 2016) <https://www.eff.org/deeplinks/2016/08/global-ambitions-pakistans-new-cyber-crime-act>

defenders, activists and journalists¹⁰. At least 23 journalists had been victims of PECA for their critical expression in Pakistan between November 2019 and November 2021, Out of which, 13 criminal cases were registered, including the addition of offences under the penal code¹¹.

Nevertheless, these persisting actions have brought about a definite trend of shrinking civic spaces in Pakistan, often posing a grave threat to civic space and democratic future of the country. The outbreak of the COVID-19 pandemic has further accelerated these changing dynamics, reiterating the government's ongoing aversion to rights-based actors and mobilisations while fostering the vitriol and mass gathering of sectarian groups¹².

This includes the imposition of targeted constraints on the freedoms of peaceful assembly, association, and expression, heightening surveillance and censorship against the media, and discernible attempts to stifle human rights defenders, journalists, and civil society organisations. However, due to the deeply rooted patriarchal nature and eminent social-cultural hierarchies that continue to drive Pakistan's society, the intensity of harassment and abuse against women, gender, religious and ethnic minorities for exercising their fundamental freedoms has been even more severe and far-reaching.

Given this backdrop, this report aims to delve into the impact of regressive measures on human rights defenders (HRDs), journalists, and rights activists, especially those belonging to the marginalised groups such as women, transgender, intersex persons or queer and religious and ethnic minorities

in Pakistan. It specifically focuses on the impact of invoking the Prevention of Electronic Crimes Act 2016 to justify increased online surveillance during COVID-19 on HRDs, W/HRDs, and journalists.

2.Objectives

The research aims at the following objectives:

1. Help in expanding evidence-based research on pressing human rights issues, including repressive measures imposed by the government in the guise of pandemic control and shrinking civic spaces that span across the region.
2. Inform advocacy for the protection of fundamental freedoms at the national and regional level.
3. Provide an analysis of the impact of invoking the Prevention of Electronic Crimes Act 2016 to justify increased online surveillance during COVID-19 on HRDs, W/HRDs, journalists, and civil society.

3. Methodology

This research follows a qualitative approach in collecting, gathering and analysing data. Both primary and secondary sources of data are used:

- (i) Primary source: Interviews of politicians and HRDs/CSOs conducted by Bytes for All.
- (ii) Secondary source: Desk review of the relevant repressive measures introduced during the pandemic; human rights monitoring and documentation conducted by likeminded organisations; relevant research reports produced by local and international non-government organisations.

10 Hashim, A., "'Chilling Pattern': Pakistani Journalists 'Targeted' by Cyber Law." Aljazeera, Nov 2, 2021, <https://www.aljazeera.com/news/2021/11/2/pakistan-journalists-targeted-cyber-crime-law-press-freedom>

11 Ibid.

12 Naviwala, N., "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>

4. Findings and Discussion

4.1 Human Rights Situation During Covid-19 Pandemic

The human rights situation in Pakistan was deeply impacted in 2020 due to the onset of the COVID-19 pandemic. The crisis crippled the country's health system, paralysed educational institutions, and exposed existing economic disparities. And while the pandemic affected all segments of society, it not only deepened—but to some extent—also created new societal inequalities.

The year 2020, thus, saw rapidly increasing unemployment¹³. In addition, the closure of schools and the highly uneven transition to online education left a vast majority of pupils unable to continue with education¹⁴. Meanwhile, domestic violence and sexual abuse against women and girls was on the rise owing to the pandemic induced curfews and restrictions on movement, leaving the victims with limited freedom or access to services¹⁵.

These challenges have also been highlighted by the United States State Department Report on human rights conditions in different countries, according to which 'threats of violence, or unjustified arrests or prosecutions against journalists, use of criminal libel laws to prosecute social media speech and censorship, and site blocking' were common in Pakistan throughout the year¹⁶.

The COVID-19 pandemic has had a significant impact on human rights defenders (HRDs), women,

minorities, and civil society organisations (CSOs) in Pakistan, and the following are the significant impacts:

- » HRDs: The pandemic has led to an increase in state surveillance and repression, with HRDs facing harassment, arrests, and detention for their work in advocating for human rights. Additionally, the pandemic has limited the ability of HRDs to carry out their work, as restrictions on movement and public gatherings have made it difficult to conduct investigations, document abuses, and engage with communities¹⁷.
- » Women: The pandemic has had a disproportionate impact on women, who have faced increased violence and exploitation, as well as a decline in economic opportunities. The pandemic has also limited access to essential services, such as healthcare and education, affecting women and girls disproportionately¹⁸.
- » Minorities: The pandemic has heightened existing inequalities and discrimination faced by minority communities, especially religious and sexual minorities in Pakistan, who often lack access to basic services and face brutality and marginalisation. The pandemic has also limited the ability of minority groups to participate in public life and express their views, affecting their ability to advocate for their fundamental rights¹⁹.

13 Mian, B., "Number of Jobless People to Reach 6.65m in 2020-21.", Dawn, June 17, 2020, <https://www.dawn.com/news/1564053>

14 Shuja, A., Ali, A., Khan, S. S. A., Burki, S. B., & Bilal, S., "Perspectives on the Factors Affecting Students' Dropout Rate During COVID-19: A Case Study from Pakistan." Sage Journals, May 17, 2022, <https://doi.org/10.1177/21582440221097378>

15 Ali, R., & Khalid, A., "COVID-19 and Domestic Violence in Pakistan: An Analysis of the Media Perspective", Journal of International Women's Studies 22, No. 12, (November 2021), <https://vc.bridgew.edu/cgi/viewcontent.cgi?article=2693&context=jiws>

16 Human Rights Watch, "World Report 2021: Events of 2020", <https://www.hrw.org/world-report/2021>

17 United Nations Development Programme, "Addressing COVID-19 in Pakistan Using a Human Rights Lens", February 10, 2021, <https://tinyurl.com/y3nx9uws>

18 International Foundation for Electoral Systems, "COVID-19's Impact on Pakistani Women", May 27, 2020, <https://www.ifes.org/publications/covid-19s-impact-pakistani-women>

19 Joshi, R., & Joshi, E., "COVID-19: A Catalyst for Minority Exploitation in Pakistan", Columbia Journal of International Affairs, Jul 8, 2020, <https://jia.sipa.columbia.edu/online-articles/covid-19-catalyst-minority-exploitation-pakistan>

- » CSOs: The pandemic has also had a significant impact on CSOs in Pakistan, as restrictions on movement and public gatherings have limited their ability to carry out their work. Additionally, the economic downturn caused by the COVID-19 pandemic has reduced funding for CSOs, affecting their ability to provide vital services to communities in need²⁰.

Overall, the COVID-19 pandemic has had a profound and negative impact on human rights and fundamental freedom particularly for marginalised groups, in Pakistan.

4.2 Government's Measures to Control the COVID -19 Pandemic

- Quarantine and Restrictions on Movement
In Pakistan, the establishment of operational emergency centres and the identification of the path of disease propagation were among the government's first actions to curb the spread of COVID-19. The primary question thus revolved around the origin of the virus, which involved examining the history of each patient in order to understand the outbreak as well as identifying the interaction patterns²¹. This aided in the isolation of areas or the confinement of people who had come into close contact with a COVID-19 patient. In addition, patients who travelled abroad were monitored even more strictly. Pakistan then temporarily closed its border with Iran after the country declared probable COVID-19 deaths in its Shia Islam pilgrimage city of Qom. As a result, thousands of Pakistanis—including pilgrims

and traders—were stranded in Iran before being quarantined at Taftan, in Balochistan²². Evidence emerging from the ground suggests that there were no bathrooms, towels and blankets in the facilities provided by the government. The pilgrims who were quarantined there compared the camp to a prison and said that they were treated inhumanely; there were no facilities but also no humanity, and everything was in disarray²³. Thousands of people were kept in close quarters in hot, squalid conditions in the quarantine center at Taftan (one of Pakistan-Iran entry points along the international border), with not even basic precautionary measures or doctors to prevent the spread of the virus²⁴.

Inferring from these firsthand accounts, it is safe to say that the quarantine camps set up to restrain and control the spread of the virus were no less than a jail where the Shia community was being forced to live in seclusion, deprived of their fundamental rights and the most basic facilities. However, due to lack of space and close contact conditions during confinement, the rate of infections at the Taftan facility increased manifold.

With the rapidly rising infection rates among the Shia community, the virus soon came to be referred as the 'Shia virus'—a discriminatory term blaming the Shia pilgrims for bringing the virus to the country from Iran—especially on social media. Responding to these aggressive attacks, a large number of Shia pilgrims came out from

20 Carnegie Endowment for International Peace, "Civic Society and the Global Pandemic: Building Back Different?" September 30, 2021, <https://tinyurl.com/2p9xb9jf>

21 The Express Tribune, "Corona Patients with Travel History to be Allocated Tag Numbers", April 19, 2020, <https://tribune.com.pk/story/2201833/corona-patients-travel-history-allocated-tag-numbers>

22 Institute of Development Studies, "Did 'Shia Virus' Blame Affect Attitudes Towards Pakistan's Shia Hazard Minority?", Retrieved August 27, 2022, <https://tinyurl.com/4mfyrvxa>

23 The Guardian, "Pakistan Coronavirus Camp: 'No Facilities, No Humanity'", Retrieved August 27, 2022, <https://www.theguardian.com/world/2020/mar/19/pakistan-coronavirus-camp-no-facilities-no-humanity>

24 Ibid.

their designated quarantine wards at Sukkur isolation center in protest²⁵.

Moving forward, as the first COVID-19 induced death was reported, the federal government suspended domestic flights with the Sindh government being the first one to impose a full lockdown at the end of March 2020, followed by Balochistan, Khyber Pakhtunkhwa (KP), and Punjab provinces²⁶. Schools, universities, businesses, and public transportation were subsequently closed for an unspecified period of time. Testing facilities were set up in major hospitals; quarantine housing was quickly allocated in each province for infected travelers returning to the country, and camp hospitals were built to accommodate large numbers of expected patients²⁷.

Following this, the paramedics, local administration and volunteers cooperated to ensure basic services to the patients admitted in Sukkur's (Sindh province) quarantine center²⁸. Furthermore, to curb the spread of the virus, harsher travel restrictions were eventually imposed²⁹.

However, to synergise and articulate a unified national effort against COVID-19, the federal government—instead of relying on the National Disaster Management Authority, which was established following earthquake and flooding disasters over a decade ago—established a militarised response by forming a new National

Command Operation Center (NCO) that comprised of military officers and is presided over by the Defence Minister³⁰.

- Response towards rising domestic violence against women

Like many other South Asian countries, domestic violence increased manifold in Pakistan during the pandemic. This is mainly because measures to curb the spread of the virus such as lockdowns and movement restrictions—especially in early phases of the pandemic—in several cases, led to the confinement of the victims with their perpetrators. As per the Aurat Foundation—a leading women rights organisation— 2,297 cases of gender-based violence were reported in Pakistan during the year 2020.

Similarly, the reports issued by the National Commission on the Status of Women, Punjab Commission on the Status of Women and several NGOs working on the rights of women also highlighted a sudden surge in domestic violence cases during the pandemic. For instance, the Punjab Commission on the Status of Women quoting psychological health professionals claimed that 'they have seen an exponential rise in the cases of domestic abuses during COVID-19.³¹' More specifically, the National Commission on the Status of Women's (NCSW) special report titled 'Impact of COVID-19 on Women' with special focus on GBV services, reported a 34 per cent rise in violence from intimate partners in Pakistan.

25 Global Village Space, "Apocalyptic Chaos in Sukkur: Coronavirus Patients Escape Quarantine Center", Retrieved August 27, 2022, <https://www.globalvillagespace.com/apocalyptic-chaos-in-sukkur-coronavirus-patients-escape-quarantine-center/>

26 Khan, AK., Khwaja, A., & Jawed, A., "Navigating Civic Spaces During a Pandemic: Pakistan Report", Collective for Social Science Research, December 2020, <https://tinyurl.com/3es6hjfa>

27 Ibid.

28 Dawn, "640 Pilgrims Cleared of Coronavirus Leave Sukkur Quarantine Centre for Home", Retrieved August 27, 2022, <https://www.dawn.com/news/1543448>

29 Crisis24, "Pakistan: Border Closures Extended for Two Weeks on April 13 /update 17", April 13, 2020 <https://tinyurl.com/2m6tmjjz>

30 Khan, AK., Khwaja, A., & Jawed, A., "Navigating Civic Spaces During a Pandemic: Pakistan Report", Collective for Social Science Research, December 2020, <https://tinyurl.com/3es6hjfa>

31 World Health Organization, "To Provide Survivor-Centred Care, Health Workers in Pakistan Learn to Ask About Gender-Based Violence with Empathy", March 8, 2021, <https://tinyurl.com/5n762e65>

Responding to this alarming situation—especially in a country where women and girls have already been the victim of physical, emotional and sexual abuses—the federal government revamped its helpline number 1099,—and developed it to meet modern standards with the help of UN Women, Pakistan, making it accessible for the maximum population in 2020 and 2021. Nonetheless, the Federal Ministry of Human Rights did not issue any official figures regarding the rise of complaints it received related to violence against women or the successes it witnessed.

Government's 'Track-and-Trace' System for Monitoring COVID19

Seeing the rapidness with which the virus spread across the globe, effective monitoring systems became a pre-requisite, especially when countries across the world knew nothing about this new disease. As a result, then Prime Minister, Imran Khan, eventually revealed that Pakistan has been using a technological system—provided by the country's military-run intelligence agency, the Inter-Services Intelligence—for tracking and tracing patients, thereby, effectively monitoring the spread of the coronavirus³².

The surveillance system which was in fact, originally meant for counter-terrorism activities, was now proving to be useful in the country's fight against COVID-19. But the use of this 'track-and-trace' technology—in reality—caused grave concerns among digital rights activists. These concerns centre around issues of privacy and the potential for abuse by the State or other actors. The collection and storage of sensitive personal data, such as health information, by the government or private

companies raise the risk of data breaches and the misuse of information for purposes other than public health. Furthermore, the use of 'track-and-trace' technology could lead to increased State surveillance and the restriction of civil liberties. For example, the government could use the information gathered through 'track-and-trace' to target political dissidents, journalists, and human rights defenders, violating their right to privacy and freedom of expression.

According to Privacy International—a digital rights organisation—the government's decision to enlist the help of its security agency to track down coronavirus patients is a 'worrying development that impedes its citizens' right to privacy.'³³

This is predominantly because, at the end of the day, the pandemic served as an opportunity for both the State and non-state actors such as social media companies to collect citizens' personal information and use it for their own benefit.

Telecommunication companies in fact, helped the Pakistani State in collecting private data of citizens without their consent³⁴. Several digital rights organisations also went ahead and argued that this surveillance will continue to extend beyond the pandemic³⁵.

There nonetheless existed little information about the 'track-and-trace' technology itself other than the fact that it combined a geofencing tracking system, which warns authorities when someone leaves a defined geographic area using the call-monitoring systems. Besides this methodology, the government also used the Cell Site Location Information (CSLI) and Call Details Record (CDR) technologies to access the personal data of citizens

32 Siddiqui, Z., "Pakistan is Using a Terrorism Surveillance System to Monitor the Pandemic", Slate Magazine, Retrieved August 1, 2022, <https://tinyurl.com/5429ntcu>

33 Privacy International, "Tracking the Global Response to COVID-19", <https://privacyinternational.org/examples/tracking-global-response-covid-19>

34 Baloch, H., "Religious Minorities, Privacy and Data Protection in the Fight Against Covid-19", Institute of Development Studies, May 5, 2020, <https://tinyurl.com/3kppvy9p>

35 Ibid.

from their cell phones and sending out corona alert messages³⁶. The Pakistani government's COVID-19 Gov PK mobile app—which has been downloaded over one million times and is marketed as a coronavirus self-assessment app rather than a contact tracing app— further helped in providing the exact coordinates of COVID-19 patients' locations. And while these are among the few examples of how the Pakistan government has been using the pandemic to gain greater access to citizens' data—the involvement of the Inter-Services Intelligence (ISI) in 'track-and-trace', the lack of information about the technology or methods used to monitor and track suspected patients are all interconnected dots pointing to one large goal—the erosion of privacy and the ability to track the movements of citizens.

Given these concerns, the need for clear and transparent regulations to govern the use of 'track-and-trace' technology, as well as the protection of personal data and privacy rights is imperative. It is also important to promote the use of privacy-preserving technologies, such as decentralised solutions, to ensure that the information collected is secure and only used for public health purposes. For this purpose, data protection law is mandatory. However, Pakistan does have data protection laws in place, although they are limited in scope and coverage. The main law that governs data protection in Pakistan is the Electronic Transactions Ordinance (ETO) of 2002, which sets out provisions for the protection of personal data in electronic form. Additionally, there are sector-specific laws such as the Telecommunications Reorganisation Act of 1996, which governs the protection of personal data in the telecommunications sector. However, the existing laws do not provide a comprehensive framework for the protection of personal data, and there is a need for the introduction of a dedicated data protection law in the country

4.3 Absence of Data Protection Law

The right to privacy is included in the Universal Declaration of Human Rights (Article 12) and the International Covenant on Civil and Political Rights (Article 17). Article 12 of the Universal Declaration of Human Rights states that, 'No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his/her honour and reputation. Everyone has the right to the protection of the law against such interference or attacks'³⁷ Article 17 states 'No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his/her honour and reputation' and 'Everyone has the right to the protection of the law against such interference or attacks.'³⁸

Based on these articles, the UN Human Rights Committee interprets the right to privacy as requiring the protection of individuals from interference with their privacy not just by the State but also by other persons, both legal and natural. It, in fact, also includes a right to the protection of the law against incursions on the right, which basically means a right to effective legal recourse for breach of privacy rights.

Pakistan is a signatory and party to several human rights instruments including the Universal Declaration of Human Rights, 1948 (UDHR) and International Covenant on Civil and Political Rights (ICCPR). During its last review under ICCPR in 2017, Pakistan had received at least two recommendations regarding surveillance and data protection law, which it stands accountable for in the upcoming review.

These recommendations relate to Articles 17 and 19. Article 17 of the ICCPR states that 'No one shall be subject to arbitrary or unlawful interference with his privacy, family or correspondence' and

36 Ibid.

37 Privacy International, "How to Talk About the Right to Privacy at the UN", March 2017, https://privacyinternational.org/sites/default/files/2017-12/UN_Guide_Final.pdf

38 Ibid.

Article 19 points towards the fact that ‘Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.’³⁹ Overall, the ICCPR commits Pakistan to ensure the protection of rights that rely on the protection of privacy, such as freedom of expression and freedom of association.

Pakistan currently lacks a data protection law, which has led to increased government control and surveillance of online content. In 2020, the government proposed a Personal Data Protection Bill⁴⁰, but it has weaknesses and could lead to the misuse of personal data for surveillance. The bill also provides immunity to government authorities for privacy violations and is criticised for being intended to justify illegal collection and processing of citizens’ personal data⁴¹.

The government should, nevertheless, realise the fact that the rationale behind the Personal Data Protection Bill is to protect the personal data of Pakistani citizens, drawing its powers from Article 14 of the Constitution, which says, ‘The dignity of man and, subject to law, the privacy of home, shall be inviolable.’⁴² To put it simply, personal data of an individual is his or her sole property and the State has the responsibility to protect it.

By overlooking this fundamental right, the Pakistan government’s intention to intervene in the civic spaces has also become clear. They desire to establish an authority under Personal Data Protection Bill 2020 along the lines of already existing weak and spineless regulators—including the Pakistan

Telecommunication Authority (PTA) and Pakistan Electronic Media Regulatory Authority (PEMRA)—in the name of protection of personal data.

The representation of security institutions such as the Ministry of Interior and the Ministry of Defence in the proposed Authority under data protection bill was, however, an even more alarming indication for the violation of people’s right to privacy. This is mainly because in a body where majority members are the direct stakeholders of the government including the Chairperson, a direct appointee of the Federal Government, decisions can very easily be swayed according to the wishes of the government. However, in response, civil society organisations working on digital rights, including Bytes for All, resisted the 2020 draft of the data protection bill and engaged with the government and other relevant stakeholders. The problematic provisions in the draft were conveyed to the Ministry of Information Technology and the Pakistan Telecommunication Authority (PTA). The sustained effort of these CSOs resulted in revision of the draft in 2021, with some of the feedback provided by the digital rights organisations being accommodated, especially with regards to composition of the commission on protection of personal data of the citizens.

But moving forward in their coordinated campaign to limit freedom of expression and squash any criticism, the government nonetheless, even went ahead to change the country’s cybercrimes statute through a Presidential Ordinance. On February 18, 2022, Pakistan’s Tehreek-e-Insaf’s government bypassed the parliament and approved the Pakistan Electronic Crimes Act 2016 (PECA) to ‘defame’ authorities, including the military and judiciary online, a criminal offense punishable by harsh penalties⁴³.

39 United Nations OHCHR, “International Covenant on Civil and Political Rights”, Retrieved August 28, 2022, <https://tinyurl.com/4ypamety>

40 Ministry of Information Technology & Telecommunication, “Personal Data Protection Bill”, Retrieved August 1, 2022, <https://tinyurl.com/mtb5tv3x>

41 Bytes for All, “Proposed Amendments to the Draft Personal Protection Bill. 2020”, <https://tinyurl.com/yckyum6h>

42 The National Assembly of Pakistan, “The Constitution of the Islamic Republic of Pakistan”, May 31, 2018, https://na.gov.pk/uploads/documents/1549886415_632.pdf

43 Kamran, H., “PECA Ordinance: A Weapon Against Freedom of Expression?”, Business Recorder, February 26, 2022, <https://www.brecorder.com/news/40157326>

This amendment however, not only contradicts the Pakistan Constitution but also increases the risk for anyone who questions the government or other state institutions. It therefore puts journalists, human rights defenders, and political opponents in particular, at risk of prosecution for doing their jobs. The amendment further makes defamation a non-bailable offense and raises the maximum prison term from three to five years, if convicted. It also broadens the concept of who can bring criminal charges for defamation, allowing any person or entity to file a complaint⁴⁴.

And in pursuance of this agenda, the government has successfully avoided any kind of public scrutiny before enacting these reforms by effectively excluding CSOs and the private sector from consultation processes.

4.4 Impact on Civil Society During COVID-19

For many decades, Pakistan's civil society has mobilised around issues such as violence against women, pieces of legislation impacting civic spaces, enforced disappearances, the marginalisation of religious minorities, and freedom of expression. In addition to these existing challenges, civil society now has to face the challenges of the pandemic as well.

The revised NGO policy of 2013 introduced guidelines of signing MoUs with the Economic Affairs Division (EAD) before receiving foreign funds. The process of government registration was in fact, termed as mandatory for any foreign organisation that intended to work in Pakistan. Additionally, the NGOs and INGOs were bound to get their accounts audited by auditing firms maintaining international standards, and providing a copy of their annual

audits to the government.

In 2015, the government once again issued a policy for INGOs further restricting them⁴⁵. As per this policy, an INGO must be a private entity separate from the government. They should therefore, not receive return profits generated to their owners or directors or staff, they should be self-governing, i.e. not controlled by the government, and should be a registered organisation with defined aims and objectives. All INGOs working in Pakistan were therefore required to submit their re-registration applications with the Economic Affairs Division (EAD)^{46,46}, but the government's increasing scrutiny resulted in several applications being turned down, particularly of those working in the human rights domain.

In 2018, at least 18 INGOs including Action Aid were asked to close their operations and leave the country⁴⁷. Earlier in 2017, 29 INGOs were issued similar notices, who ultimately challenged the decision before the committee in EAD.

While the government's crackdown on INGOs continued, it also announced a new policy for the local civil society organisations in 2021, whereby the NGOs were supposed to register and submit all their data through an online portal. As per this policy, the government claimed that it will complete the registration process in 60 days. However, an organisation who wishes to receive foreign funds must have a two-year on field working experience. The impact of the new policy on local civil society organisations in Pakistan is likely to be significant. The requirement for NGOs to register and submit their data through an online portal may result in increased government monitoring and surveillance of these organisations. Additionally, the two-

44 Human Rights Watch Report, "Pakistan: Repeal Amendment to Draconian Cyber Law", February 8, 2022, <https://www.hrw.org/news/2022/02/28/pakistan-repeal-amendment-draconian-cyber-law>

45 Naviwala, N., "Pakistan Uses Regulations to Tighten Grip on NGOs", Devex, October 18, 2017, <https://www.devex.com/news/pakistan-uses-regulations-to-tighten-grip-on-ingos-91003>

46 46 Relief Web, "Pakistan: Withdraw New Repressive NGO Rules", October 6, 2015, <https://reliefweb.int/report/pakistan/pakistan-withdraw-repressive-new-ngo-rules>

47 DAWN, "[ActionAid says 18 INGOs told to leave Pakistan](https://www.dawn.com/news/1436911/actionaid-says-18-ingos-told-to-leave-pakistan)", October 5, 2018, <https://www.dawn.com/news/1436911/actionaid-says-18-ingos-told-to-leave-pakistan>

year on-field working experience requirement for organisations wishing to receive foreign funds could limit the ability of new organisations to receive funding, potentially hampering their growth and ability to carry out their work effectively. This new policy, along with the ongoing repression of INGOs by the government, may also have a chilling effect on the ability of CSOs to operate freely and carry out their work without fear of government interference. This could negatively impact the ability of these organisations to advocate for human rights, address social and economic issues, access to justice for the victims, and promote good governance.

The suspension or termination clauses of the MoU also state 'NGO/NPO found engaged in activities having implications for national security or promote religious intolerance and hatred and ethnic violence shall lead to suspension/termination of the MOU.' This particular section is overly broad and subjective, especially the national security provision⁴⁸. According to the EAD website list issued in 2021, 478 NGOs registration applications were in progress, 305 NGOs' status was awaiting, and only 107 NGOs were approved.

Besides the government's own initiatives, the compliance pressure from the Financial Action Task Force (FATF) also created a window for the administrators to cancel the licenses of several thousand NGOs in different provinces. The prevailing FATF related policies, in fact, brought dire consequences for the not-for-profit organisations. By November 2020, the Khyber Pakhtunkhwa government had deregistered 3,851 NGOs⁴⁹.

The Sindh government also de-registered more than 7,100 NGOs in December 2019 for not sharing their financial records with the authorities under FATF regulations. In 2017, Punjab government had de-

registered 3,773 out of nearly 9,000 active NGOs that were registered with different departments in the province. They issued directives to re-register under the Punjab Charity Act 2018 with the Punjab Charity Commission⁵⁰.

To further complicate the situation, the State, in all four administrative units, has pushed for Provincial Charitable laws⁵¹. Currently, Balochistan, Khyber Pakhtunkhwa, Punjab, and Sindh provincial governments have all approved their respective Charities Acts with Authorities or Commissions established. These Acts not only criminalise the charities in Pakistan, but also impose heavy fines; for example, Section 28 of the Khyber Pakhtunkhwa Charity Act 2019, Section 24 of the Sindh Charity Act 2019, and Section 32 of the Punjab Charity Act 2018.

Khyber Pakhtunkhwa Charity Act 2019, Section 28:

(1) Any person who dishonestly or fraudulently tampers with, conceals or destroys any records pertaining to the collection of any charitable fund to which this Act applies or violates the provisions of this Act, shall be deemed to have committed an offence under this Act.

(2) A person, who contravenes any provision of this Act or the rules or of any order made, direction given or condition imposed under this Act, shall be liable to imprisonment for a term which may extend to six months but shall not be less than 15 days and fine which may extend to Rp 100,000 but shall not be less than Rp 25,000.

(3) The Magistrate of First Class, trying an offence under this Act, may order the confiscation or recovery of any fund wrongfully collected, misused, misapplied or misappropriate by any person in contravention of this Act⁵².

48 <https://www.ead.gov.pk/SiteImage/Misc/files/2022/NGOs-Policy-2022.pdf>

49 Ashfaq, M., "NGOs Bear Full Brunt of Govt's Drive to Fulfil FATF Requirements", DAWN, November 30, 2020, <https://www.dawn.com/news/1593118>

50 Khalti, S., A., "3,773 NGOs Deregistered in Punjab", The News, January 28, 2017, <https://www.thenews.com.pk/print/182180-3773-NGOs-deregistered-in-Punjab>

51 Salahuddin, S., "All NGOs Asked to Register with Punjab Charity Commission", The News, July 3, 2020, <https://www.thenews.com.pk/print/681353-all-ngos-asked-to-register-with-punjab-charity-commission>

52 Provincial Assembly of Khyber Pakhtunkhwa, "The Khyber Pakhtunkhwa Charities Act, 2019", July 18, 2019, <https://www.pakp.gov.pk/acts/the-khyber-pakhtunkhwa-charities-act2019/>

Sindh Charity Act 2019, Section 24:

(1) Any person who dishonestly or fraudulently tampers with, conceals or destroys any record pertaining to the collection of any charitable fund to which this Act applies shall be deemed to have contravened the provisions of this Act.

(2) A person who contravenes any provision of this Act or the rules or of any order made, direction given or condition imposed under this Act shall be liable to punishment of imprisonment for a term which may extend to one year but which shall not be less than 6 months and fine which shall not be less than Rp 50,000 or more than Rp 100,000.

(3) The Commission may appoint an administrator to take over administrative control and management of a charity in a prescribed manner. Provided that such appointment may not exceed a period of more than six months.⁵³

Punjab Charity Act 2018, Section 32:

(1) Any person who dishonestly or fraudulently tampers with, conceals or destroys any records pertaining to the collection of any charitable fund to which the Act applies shall be deemed to have contravened the Act.

(2) A person who contravenes any provision of the Act or the rules or of any order made, direction given or condition imposed under the Act shall be liable to punishment of imprisonment for a term which may extend to 6 months but which shall not be less than 15 days and fine which shall not be less than Rp 25,000 or more than Rp 100,000⁵⁴.

In certain cases, these acts impose a permanent ban on individuals or organisations associated with not-for-profits from participating in charity work, or from joining any charitable organisation in the future if they are convicted of a violation⁵⁵. On the contrary, the government claims to facilitate

all charitable organisations and provide them one-window of operations for completion of their re-registration processes, etc.

The CSOs from Sindh province, while expressing their serious concerns, challenged the Sindh Charity Act 2018 in the Sindh High Court, pleading to declare the Sindh Charity Act 2018 as null and void. Their apprehensions on the law's specific sections, including 3, 9, 22, 24, 25, 26, 27, 28 and 29 are grave, and want these to be quashed⁵⁶.

Besides all the challenges, the CSOs in Pakistan still played their active role in responding to the pandemic crisis. Their advocacy with the government succeeded in securing MoUs for 6 months under special circumstances, where they could receive foreign funding from development donors, only to work for the pandemic emergency response in close assistance with regional and district administrations⁵⁷.

4.5 Civil Society Stakeholders on Regulation of NGOs And Transparency in Governments' Processes

Civic spaces were in fact, reenergized in 2020 as the impact of COVID-19 exacerbated existing vulnerabilities and inequalities. And as employment continued to be threatened with pay-cuts, layoffs and job losses becoming common during the pandemic, protests—surrounding labour and livelihood rights, student claims for assistance and space in educational institutions, and health personnel requests for security and benefits as they tried to manage with the increased disease burden—began spurring across the country. In order to understand the situation better and to comprehend the shrinking civic spaces owing to

53 Provincial Assembly of Sindh, "The Sindh Charities Registration and Regulation Act, 2019", December 2, 2019, <http://www.pas.gov.pk/index.php/acts/details/en/32/430>

54 <http://punjablaws.gov.pk/laws/2697.html>

55 Section 20 (2) & (3) of The Balochistan Charities (Registration, Regulation and Facilitation) Act No. XI of 2019. See the link: https://pabalochistan.gov.pk/pab/pab/tables/alldocuments/actdocx/2020-01-22_12:46:32_f9a0b.pdf

56 Khurshid, J., "Sindh Charities Registration and Regulation Act Challenged in SHC", The News, August 12, 2020, <https://www.thenews.com.pk/print/699247-sindh-charities-registration-and-regulation-act-challenged-in-shc>

57 Mukhtar, I., "Pakistan Eases Aid Restrictions as Coronavirus Cases Rise", The New Humanitarian, April 15, 2020, <https://www.thenewhumanitarian.org/news/2020/04/15/coronavirus-Pakistan-aid-access-NGO-restrictions>

the post pandemic repressive laws and policies such as NGO Policy⁵⁸ and Charities Act⁵⁹, interviews with actors working in diverse CSOs as well as parliamentarians were conducted. And while some interviewees agreed to the fact that regulating and monitoring the work of NGOs including their funding sources was a fair call made by the government, the laws in itself were extremely flawed. There, in fact, remained a lack of interconnectivity in the framework of the law between provincial and federal governments with no unified registration process and a considerable lack of uniform audit system that acceptable to charities commission⁶⁰.

An independent policy expert and former Secretary Law Punjab, Mohsin Abbas, in his interview stated that, 'There are two important angles that highlight the objective and purpose of this law, making it a positive development; one is to ensure that the funding or donations are not being given to terrorist organisations, and second is that the funding is being used for the cause or the purpose it was given for and is not misused. When we talk about the framework of this law, the biggest flaw that can be seen is lack of interconnectivity among the laws. If you are given a driving license in Balochistan, it is valid all over Pakistan, then why is it not possible to use the same registration status in all cities of Pakistan, for example if you take Securities and Exchange Commission of Pakistan (SECP)⁶¹ registration in Islamabad and want to work in Karachi then why do you need to register again in Karachi.'

There thus needs to be a well-established interconnectivity among federal and provincial institutions. Similarly, audit system should also be acceptable among all such institutions. If the Balochistan Charities Commission is auditing an organisation, the audit should also be acceptable to SECP and vice versa.

Ms. Uzma Kardar, a member of Punjab Assembly representing Pakistan Tehreek-e-Insaf explained that as a parliamentarian, she recognises that Pakistan faces a multitude of security challenges, which can sometimes lead to regulatory policies being made quickly without full consideration of all stakeholders in the policy-making process. She acknowledged that many civil society organisations (CSOs) are contributing positively to society at the grassroots level, and their efforts are reflected in the country's improving international ranking.

She further suggested that these CSOs should be brought to the table during discussions with relevant government departments, ministries, and authorities to revise legislation and make it more supportive. She said that she views CSOs as partners of the government, acting as the helping hands and implementing arms. Furthermore, she acknowledges that there are deficiencies in current laws and a disconnect between laws and their implementing mechanisms, and believes that they require significant amendments. The role of CSOs is crucial as they can provide valuable input by conveying the feedback of the grassroots community and improving the laws.

Dr. Nafisa Shah, a member of National Assembly of Pakistan, and a representative of Pakistan People Party says, 'Unfortunately, since 2013 in the name of regulation, the work of civil society has been hindered hence civil society feels stifled. Our youth and women need a strong civil society. Also, civil society can add a new dimension in the performance of parliamentarians. The depth, the experience these organisations have will be a contributing factor in a good legislation.'

While the establishment of National Commission for Human Rights (NCHR) as well as the National Human Rights Institute (NHRI) according to the Paris Principles was a huge landmark, the recent

58 The Ministry of Economic Affairs has announced 'NGO policy 2021' for the non-government organisations (NGOs) and has made two-year fieldwork mandatory to receive foreign aid.

59 An Act to register and regulate charities and collection of charitable funds.

60 Every province in Pakistan has a charity commission that is the provincial regulator of charities.

61 The SECP is concerned with the regulation of the corporate sector, capital market, insurance companies, non-banking finance companies and private pensions.

appointment of the commission only mirrors a bureaucratic coup where all important decision-making positions have been given to bureaucrats. Owing to this bureaucratic nature, the commission's true purpose—to advocate for independent spaces and promotion of rights-based agenda—now stands somewhat lost.

A leading rights activist, whose identity is being kept anonymous as per their request, says that there is a huge impact on development of shutting down NGOs and their activities with the spaces of raising voices for ensuring fundamental rights and freedoms slowly tethering away. And the impact of this will not only be immediate but also long term, with no freedom of expression or thought remaining in the country.

In addition, the facilitation of civic spaces is important because constructive criticisms and freedom of expression are important for strengthening democracy. While the government must monitor foreign funding sources of NGOs and CSOs, it must also create its own funding sources. Apart from this, there must also be a self-accountability or an internal accountability mechanism for the CSOs.

In furtherance, the Pakistan Muslim League Nawaz's legislator, Mehnaz Akbar Aziz in a general statement underlined that, 'First of all it is important to specify what is a CSO in today's Pakistan, then need to address the problems they are facing and make regulation mechanisms for them, not to strangle but to regulate, and then how they can work. The work of civil society should be shared with parliament so that it can be included in policy and shared with a supreme body.' She also said that there is a need to clarify the role of different CSOs and to understand their perspectives on the NGO bill.

Given this backdrop, it is safe to say that Pakistan's government—in reality—has been repeatedly shrinking civic spaces in the name of regulation of NGOs and Financial Action Task Force (FATF).

The government has restricted the space for civil society under the garb of controlling the pandemic, maintaining law and order to ensure domestic peace and stability. Civil society is being stifled and strangulated in disguise of regulation mechanisms. However, for effective management, space needs to be made for CSOs, NGOs and unions, without compromising the regulation of their source of funding, as Pakistan has many external and internal security threats, such as extremism and terrorism. The research conducted by these bodies and their experience in the field can add to good legislation.

Civil society including think-tanks and research centers also provides data banks to the government, as the government does not have sufficient data or issue-based research. Youth engagement in CSOs is minimised because of strict registration, due to which the younger generation is being involved in negative activities rather than productive ones. It is necessary not to strangle civil society but to regulate it. Laws on provincial level are akin to strangulation, with foreign funding restriction, and criminalisation of activities. The role of civil society should be clear. A deep analysis on the NGO bill is important where all actors are included to discuss reservations and suggest policy recommendations.

Civic spaces in Pakistan have considerably shrunk over time. For the past 10 to 15 years, the government has been, in a systematic way, increasingly imposing restrictions on organisations working on human rights, women rights, labour rights, child rights and minority rights. Democracy at the grassroots level is missing. Rights-based voices are being barred through various laws. A single law for all organisations made in consultation with them should be the solution instead of multiple laws at federal and provincial levels.

To adhere to democratic principles, a single NGO law made with the consensus of all mainstream NGOs needs to be endorsed by the federal and provincial authorities. CSOs should be involved in

the policy making process. These restrictive laws have economic impacts as well, due to the ban on foreign funding. Only terrorist funding should be of concern. NGOs work through a proper system; they have audit and accountability mechanisms to meet the requirements of international donors. The government does not like voices raised for human rights, which is why they use foreign funding as an excuse.

Challenges Pakistani Journalists Faced During COVID-19

Across the world, Pakistan has been among one of the most difficult countries to practice journalism due to its restrictive free speech environment and impunity for crimes against journalists⁶². However, with the onset of the COVID-19 pandemic, Pakistani media faced several new challenges in meeting its mandate of being the public guardian to report on pertinent issues. They span from the brimming health-related safety issues for journalists at work, risky field reporting environments, increased mobility restrictions in the face of lockdown, lack of reporters and editors who understood public health issues, to access to health experts to generate reliable information on the pandemic.

The traditional environment in which the media functions in Pakistan nonetheless, exacerbated these problems. The Tehreek-e-Insaaf government that was in power during the peak of the pandemic, in fact, implemented a coercive agenda to limit free speech and pressurise the media at the political level, thereby, harming not only the media but also socio-political rights and civil liberties, negatively impacting freedom of expression and access to information. The COVID-19 scenario thus, presented

an opportunity for the government to push its objective under the guise of apparently deterring fear and paranoia⁶³.

Another challenge during the pandemic was spreading disinformation and misinformation about ways to cure the virus or misconceptions and reservations about its vaccine⁶⁴. According to research conducted by Bytes for All in association with Minority Rights Group, among a sample of social media users' comments, 98 per cent of the conversations were related to reservations about vaccines, 59 per cent related to access to vaccines, 43 per cent related to distrust in health and other government authorities⁶⁵.

While analysing the social media comments and in-person interviews according to religious beliefs of the people, this study found that a major reservation for the vaccine existed across religion divides where 14.3 per cent of those belonging to the majority community (mainstream Muslim population) and 25 per cent of those belonging to the minority community (Hindus, Christians, Ahmadis, Shia Muslims) remained 'in doubt over vaccine safety'.

Other concerns that were common among the majority community but remained infrequent among the minority community included 'doubt over vaccine efficacy' (11 per cent), 'conspiracy related fears' (12 per cent) and 'religious reasons' (8 per cent). However, the majority of the interviewees reported having been victims of misinformation regarding vaccines in the early stages of vaccine roll out, such as rumors that the vaccine caused death after two years, affected sexual function, or was a method of surveillance as part of a foreign agenda or conspiracy⁶⁶.

62 Jamil, S., "Culture of Impunity and Safety of Journalists: Is Safe Journalism a Distant Dream in Pakistan?", ResearchGate, March 2019, <https://tinyurl.com/3d4z2bpn>

63 Khan, F., "Pres Freedoms in Pakistan: As Polarization Deepens, Journalism Pays the Price", South Asian Voices, September 1, 2022, <https://southasianvoices.org/pakistan-press-freedoms/>

64 Mehmood, Q., "COVID-19 Vaccine Hesitancy: Pakistan Struggles to Vaccinate its Way Out of the Pandemic", National Library of Medicine, February 10, 2022, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8841903/>

65 Minority Rights Group International, "Diversity Impact on Vaccine Equity in Pakistan". February 17, 2022, <https://minorityrights.org/publications/dive-pakistan/>

66 Minority Rights Group International, "Diversity Impact on Vaccine Equity (DIVE) in Pakistan". March 30, 2022, <https://minorityrights.org/publications/dive-pakistan-2/>

This complex situation added to the workload of journalists in Pakistan who were constantly on the lookout for additional online training, webinars, and workshops to learn new skills to verify available online information regarding the pandemic. But unfortunately, Pakistan does not consist of many institutions that work towards building capacity among journalists and media practitioners.

Furthermore, reporting became a dangerous task during the COVID-19 pandemic in Pakistan with journalists being infected by the virus and risking their lives. The rise in infection rates and deaths of media reporters and journalists only demonstrated how media employees—particularly those in the field—were directly exposed to the deadly virus owing to a lack of safety measures and procedures ensured to them by the government. According to a report, at least 27 journalists in Pakistan died due to COVID-19 infection⁶⁷.

The lack of coordination among government organisations, typical government attitudes toward concealing facts and covering up errors, and a plethora of channels for information sharing make reporting even more difficult. Majority media organisations' capacity was badly exposed, especially covering in crisis time, as they had no stated policies and/or standard operating procedures (SOP) vis-à-vis reporting in the time of pandemic safely.

Malik Saeed Awan, an Islamabad-based reporter says that "majority journalists working for local media were at maximum provided with masks for coverage in the field. Besides that, they received no training by their company on how to report safely during COVID-19. But his company, as a precautionary measure, had conducted COVID-19 tests for the whole staff in Islamabad Bureau, several times, when any member of the team contracted the

virus". On the other hand, the international media organisations working out of Pakistan had adopted the policy of work-from-home for their staff.

The government also did not undertake any measures where they had engaged with the journalists on this topic, except the condolence messages being issued by the Ministry of Information and Broadcasting on the deaths of some of the journalists in major cities, such as Tariq Mahmood, Arshad Waheed Chaudhry, and Johar Majeed.

This basically shows that neither media organisations nor the government took the health and safety of the journalists as a serious matter. Saeed says 'It is a sad fact that in our media organisations, the equipment such as cameras and vehicles are insured, but no health insurance is provided for the journalists.' These circumstances have nonetheless badly impacted the work of journalists on ground, who lived in a constant fear of either being contracted with the virus, reprisals or sacked from their organisations, etc.

And while on one hand, Pakistan journalists had been struggling with the challenges posed by COVID-19, the Pakistan government had also been conducting a crackdown against several media organisations and journalists critical of the government's policies. Under the government's pressure, several television programs were taken off air during the pandemic days and their teams were laid off. Similarly, opinions in newspapers were completely censored.

Hamid Mir of Capital Talk is just one example, who expressed his anger against the establishment and the government for their alleged involvement in threatening and violence against journalists, including Absar Alam, Asad Toor, Matiullah Jan, and others who were targeted by unknown assailants and never been brought to justice.

67 Anadolu Agency, "27 Journalists Fell Victim to Corona Virus in Pakistan: Report", Pakistan Today, January 8, 2022, <https://tinyurl.com/yxc2cz5p>

5. Conclusion

Across the globe, the pandemic has undermined the legitimacy of many democratic administrations and fostered authoritarian behavior on the political front. Countries such as India, Bangladesh, Sri Lanka and others introduced new regulations vis-à-vis the work of human rights defenders and civil society organisations. This stands true even for Pakistan, where the COVID-19 pandemic has highlighted a deficiency in citizens' rights to access quality healthcare while preserving their privacy.

Owing to the pre-existing political trends, strains on civic spaces and the rising infection rates, civil society actors and groups continued to face new obstacles in Pakistan. Those who want broader civic spaces and freedoms, whether to challenge discriminatory blasphemy laws, resurrect student unions, or demand the rights of women and religious minorities, face charges of sedition and blasphemy. The government's approach to ensuring freedom of not-for-profit organisations and a conducive working environment, particularly those working on human rights issues, remains hostile. In recent years, multiple regulatory mechanisms have been

introduced at federal and provincial levels, but they lack coherence and transparency. Moreover, these frameworks have made it very difficult for the grassroots organisations to receive foreign funds for human rights and development work.

Credible data on the pandemic's impact is unavailable since unofficial sources of COVID-19 data have been suppressed with government statistics potentially underreporting disease spread and mortality. The government withholds advertising from media outlets and newspapers that cover the ruling party or the military. Based on mainstream coverage, it is impossible to gauge the strength of civil society organisations.

The places for public debate on critical issues are so limited due to NGOs' restriction and control over media and narrative that stakeholders are unable to properly engage with one another to discuss the socio-economic impact of COVID-19 and the solutions required for Pakistan. As they struggle to get finances and operating space in the current atmosphere, rights-based organisations will need to adjust their strategy.

6. Recommendations

1. The government needs to introduce a coherent and transparent regulatory mechanism for NGOs, which enables a rights-friendly working environment for them;
2. The government must ascertain that INGOs and foreign partners are allowed to take part in socio-economic development of the country, especially the marginalised and excluded segments of the society;
3. The government must guarantee the safety of human rights defenders, civil society activists, and journalists. It should ensure that the recently introduced legal frameworks are not used to target them;
4. The government should also improve the response mechanism by making the civil society actors including NGOs, HRDs and media as their partners and facilitate them in reaching out to disadvantaged and vulnerable segments of the society;
5. The curbs introduced on civic space and fundamental freedoms of the civil society actors in particular and public in general in the form of cybercrimes regulations must be revisited;
6. Media organisations should build the capacities of their workers in newsrooms and in the field on crisis reporting; and
7. Media organisations should also prioritise the safety and security of journalists especially while covering the news during pandemics.

SRI LANKA: IMPACT OF MILITARISED RESPONSE AGAINST COVID-19 ON HRDS, JOURNALISTS, AND CIVIL SOCIETY ORGANISATIONS

AUTHOR: INFORM HUMAN RIGHTS DOCUMENTATION CENTRE

1. Introduction

Over the past couple of years, Sri Lanka has been confronted with one of the worst economic, social and political crises ever since their independence from British colonial rule. While many see this as a result of the COVID-19 pandemic, the truth is that such deterioration began even before the onset of the health crisis were owing to unsustainable economic policies, bad governance, deep-rooted corruption, and malpractices, the Island's economy was gradually drying out. The pandemic, however, accelerated this economic downslide, thereby, pulling the country into the worst foreign debt crisis, which reduced its foreign currency reserve to below USD 1.6 billion¹.

Along with the economic downturn, the deterioration of the socio-political condition of the country—which has been going on for about the last couple of decades—also accelerated inevitably. This corrosion can however, be accounted to the governance system

which is hard hit by deep political polarisation, the anti-pluralistic campaign backed by the Sinhala Buddhist nationalism, and public endorsement of kleptocrats as rulers that have often resulted in the country being governed with incorrect policies and strategies, directly impacting the betterment of the people.

In fact, in the past two decades, different forms of corruption have become a deep-rooted tradition of the Sri Lankan society where government projects—either small scale or large-scale developmental projects—have become realms of corrupted politicians and their associates at various levels. According to the Corruption Perception Index, the level of corruption in Sri Lanka increased 8 places from 2019 to 2021, despite the country being in a situation where providing health and livelihood subsidiaries for COVID-19 virus affected families and poor communities, was absolutely necessary.²

1 Economy Next, “Sri Lanka Forex Reserves Down to US\$ 1.6bn in November”, December 8, 2021, <https://economynext.com/sri-lanka-forex-reserves-down-to-us1-6bn-in-november-88635/>

2 Transparency International, “Corruption Perception Index 2021”, Accessed November 2, 2022, <https://www.transparency.org/en/cpi/2021/index/lka>

Inferring from these statistics, it is safe to say that, irrational political decision-making coupled with continued efforts to suppress citizens' voices against unjust government policies and practices from the previous years have not only mirrored in the development of COVID-19 response strategies, but have also resulted in a huge socio-political unrest and a devastating economic crisis.

The authoritarian behaviour of the government in both policy-making and implementation has in fact become more distinctive by disregarding the role of the legislature and commissioning the military to implement COVID-19 response policies during the pandemic. That inevitably contributed to the deterioration in the rule of law and human rights situation of the country. For instance, the Executive President was reluctant to reconvene the parliament according to the provisions and bring new laws to control the pandemic³. Instead, he declared a health emergency without any constitutional backing by providing more powers to the security forces.

In addition, the popular public perception—created and celebrated in the post-war context—that viewed an authoritarian ruler supported by military discipline as a solution for everything was also observed in the COVID-19 context, and in the development of policy measures that expedited control over fundamental rights and economic downfall of the country.

The following waves of COVID-19 in Sri Lanka were more tenuous and stressful owing to the overwhelming intervention of the Army in decision-making processes, often disregarding the expert views offered by health professionals. With these repeated interventions, the government's efforts to suppress people's rights to freedom of speech, peaceful protests, and descent, especially against poor economic management and increased cost

of living, enlarged the dissatisfaction of the public against the government's militarising policies. Unequal application of the law based on ethnicity, religion, and political view using an arbitrary implementation of administrative procedure became an extremely generalised formula throughout the pandemic and even during years of its aftermath.

The political stance adopted to address the economic crisis was in fact, responded to by peaceful protests by citizens bringing more and more youths together who were now demanding for a change in the system and the resignation of the government. However, in light of the government's suppression of these protests through the organised use of force, these ongoing protests only became more violent—especially against ruling party politicians and their supporters—losing a few lives and damaging public properties⁴.

Even prior to this incident, a police fire at Rambukkana in Kegalle district on April 19, 2022, resulted in the death of a youth activist⁵. But despite the authorities' crackdown, firm in their resolve, there was a large public support to the youth-led public protest, forcing the Executive President to leave his office with the final notification of his resignation coming on July 13, 2022.

Following a vote in the parliament, new Executive President Ranil Wickremasinghe assumed office on July 20, 2022. But even after being in power for about six months, Wickremasinghe's government—till date—has not been able to provide a strategic direction to overcome the country's prolonged economic crisis or put forth a concrete proposal for bringing about changes in the system. Instead, the rule of law and deterioration of human rights condition has only increased further with the government's repeated efforts to repress protesters

3 Chabba, S., "Coronavirus Keeps Sri Lanka in Political Disarray" DW, May 29, 2020, <https://www.dw.com/en/coronavirus-keeps-sri-lanka-without-a-functioning-parliament/a-53615108>

4 Farzan, Z., "Here's a List of SLPP Politico Property Destroyed So Far", NewsFirst, May 10, 2022, <https://www.newsfirst.lk/2022/05/10/heres-a-list-of-slpp-politico-property-destroyed-so-far/>

5 BBC, "Sri Lankan Crisis: One Killed After Police Fire Live Bullets at Protesters", April 20, 2022, <https://www.bbc.com/news/world-asia-61151037>

and confront them with a strong political retaliation. The Prevention of Terrorism Act, which has been highly criticised as draconian law, has in fact, been used to detain human rights defenders including university student leaders as they actively engaged in protests.

It was evident that many top-level officials who enjoyed extreme authoritarianism in decision-making during the pandemic enjoyed an opportunity to increase their private gains. The militarised response to the pandemic and the strategic suppression of the democratic process prevented civil society and opposition political parties from progressively being watchdogs of such malpractices and creating social discourses.

This research is intended to analyse the impact of authoritarian policies and behavior of the Sri Lankan government adopted through a militarised process on the pretext of controlling the COVID-19 pandemic. While its analysis of the constitutionality of the government policies and administrative practices broadly discuss how targeted constraints were imposed on the freedom of peaceful assembly, association, religion and expression, through heightening violence and censorship against the media, and discernable attempts to suppress human rights defenders, journalists, trade unionists and civil society organisations.

The constant harassment against religious and ethnic minorities which have been a common phenomenon in deeply polarised ethno-religious sentiment for centuries in Sri Lankan society has also been analysed in perspectives of COVID-19 preventive policy and practices. This report provides a snapshot of major incidents affected fundamental freedom and rights of Sri Lankan citizens during the pandemic.

2. Methodology

This research principally resorted to a qualitative approach in collecting, gathering, and analysing data, while quantitative data from secondary sources were embedded as appropriate. The desk research was applied to be the fundamental method of data collection and analysis.

It mainly consisted of exploring legal and administrative framework which included the Constitution of Sri Lanka, 1978, along with its amendments, the International Convention on Civil and Political Rights Act, 2007, Penal Code of Sri Lanka, Prevention of Terrorism Act, 1949, Police Ordinance, 1865, Public Security Ordinance, 1947, Quarantine and Prevention of Diseases Ordinance, 1897, and regulation issued from time to time by the Ministry of Health and Presidential Secretariat publishing in the Gazette of the government and by reviewing human rights reports, recommendations and judgements of courts and human rights commission, and circulars of the presidential secretariat and various ministries.

In addition, relevant international treaties, recommendations of the United Nations Human Rights Council and health guidelines, and information shared by the World Health Organization was also studied. For the clarification of key information, testimonials were conducted from affected human rights defenders (HRDs), journalists, and civil society organisations (CSOs) to some limited extent with greater consideration of their security issues.

Secondary sources of this research included desk review of the relevant repressive measures introduced during the pandemic, human rights monitoring and documentation conducted by other organisations, and relevant research reports produced by local and international non-governmental organisations (NGOs).

Given that the INFORM Human Rights Documentation Centre has been engaged in recording and publishing all incidents of repression in Sri Lanka since November 2020, its publications were used as the main secondary source of study, analysing incidents related to the COVID-19 pandemic and human rights violations during the research period along with several media reports. Reports and publications brought out by other organisations such as Centre for Policy Alternatives, Transparency International Sri Lanka, and Amnesty International as well as individual independent interlocutors were also used as reference to understand the implications of repressive measures on human rights and civic space during the pandemic.

3. Overview of the Human Rights Situation in the Country

Overview of the human rights situation in the country between 2020-2021 since the onset of the pandemic

Throughout Sri Lanka's history, the rule of law and human rights have been important topics in mapping the country's socio-political discourse. Arbitrary arrests, detentions, abductions, violence against journalists and human rights activists, suppression of freedom of expression, the assassination of suspects during police custody, time-to-time promulgation of emergency regulations, and use of the Prevention of Terrorism Act with political intentions have become common practices of the subsequent Sri Lankan governments. Besides, no concrete answers have been provided about the cases of enforced

disappearances during the civil conflict between Tamil militants and the Sinhala government, especially after their surrender to the Sri Lankan Army.

The government has even failed to hand back all the lands that were acquired from minority Tamil people in northern Sri Lanka, during and after the war. In addition, no proper investigations have been conducted or brought before the court of law to examine the assassination of veteran journalists like Lasantha Wickramatunga, the abduction of people like famous cartoonist Prageeth Eknaeligoda, and the assault and torturing of several other prominent journalists and activists⁶.

However, following the government's continued failure to not only ensure the constitutional procedures but also the country's international commitments, the United Nations Human Rights Council (UNHRC) in its resolution HRC/RES/46/1 put forth in March 2021, following its previous resolutions⁷, again expressed serious concerns about the early warning signs of a deteriorating situation of human rights in Sri Lanka, including the accelerating militarisation of civilian government functions⁸.

The resolution underlined policies that adversely affected the right to freedom of religion or belief, increased marginalisation of persons belonging to the minority Tamil and Muslim communities, surveillance and intimidation of civil society, and restrictions on media freedom identified as key issues among many others⁹. It also stressed the importance of independence of the judiciary to improve the human rights situation of the country.

6 Sri Lanka Brief, "Unfinished Investigations of Journalists Killings in Sri Lanka: CID Points Figure at Security Forces," August 26, 2019, <https://srilankabrief.org/unfinished-investigations-of-journalists-killings-in-sri-lanka-cid-points-fingers-at-security-forces/>

7 HRC/RES/30/1 in October 2015, HRC/RES/34/1 in March 2017 and HRC/RES/40/1 in March 2019

8 Section 7, A/HRC/RES/46/1,

"Expresses serious concern at the trends emerging over the past year, which represent a clear early warning sign of a deteriorating situation of human rights in Sri Lanka, including the accelerating militarization of civilian government functions; the erosion of the independence of the judiciary and key institutions responsible for the promotion and protection of human rights; ongoing impunity and political obstruction of accountability for crimes and human rights violations in "emblematic cases"; policies that adversely affect the right to freedom of religion or belief; increased marginalization of persons belonging to the Tamil and Muslim communities; surveillance and intimidation of civil society; restrictions on media freedom, and shrinking democratic space; restrictions on the public memorialization of victims of war, including the destruction of a memorial; arbitrary detentions; alleged torture and other cruel, inhuman degrading treatment or punishment, and sexual and gender-based violence; and that these trends threaten to reverse the limited but important gains made in recent years, and risk the recurrence of policies and practices that gave rise to the grave violations of the past;"

9 ReliefWeb, "Promoting Reconciliation, Accountability And Human Rights in Sri Lanka (A/HRC/RES/46/1)", March 26, 2021, <https://reliefweb.int/report/sri-lanka/resolution-adopted-human-rights-council-23-march-2021-461-promoting-reconciliation>

The above adverse condition of the country's human rights was further exacerbated following the Easter Sunday attack carried out on 21 April, 2019. In fact, the heightened public security concern capitalised on many human rights violations that deliberately targeted the Muslim community prior to and during the outbreak of the COVID-19 pandemic. Arbitrary arrests of Muslim activists, politicians, businessmen, and professionals—based on false accusations—have continued to be widely reported even a year after the attack, especially following Gotabaya Rajapaksha's election as the president in 2019.

Fabricated fear of national security and a strategical Muslim invasion through biological control of the Sinhalese population formed the main slogan of the election campaigns of Sri Lanka Podujana Peramuna (SLPP) led coalition in both presidential and parliamentary elections held in 2019 and 2020 respectively. Along with this divide-and-rule policy, antagonised public perceptions of religious extremism and hailed nationalism have widely and repeatedly been used to suppress the voices of ordinary Sri Lankans against incidents of human rights violations, especially those pertaining to the minority community.

As a result of these persisting discriminatory practices and hate campaigns circulating on social media by religious and nationalist extremist groups, Muslims and other minority religious groups increasingly became vulnerable during the COVID-19 crisis, constituting as the primary victims of irrational restrictions and prohibitions¹⁰. The arbitrary behavior of police and security forces in acting ultra vires—that predominated this period—only made matters worse especially for the marginalised communities, ethnic and

religious minorities, people with disabilities, and gender groups. In one disgraceful case, it was reported that a 14-year autistic Muslim boy had been brutally beaten and tied against a post by police at a checkpoint during the curfew¹¹.

In addition, unequal implementation of travel restrictions, efforts of suppressing free speech in social media under the allegation of spreading misinformation and hampering public protest using health emergency regulations were illegally decreed.

As a matter of fact, several efforts of the police in trying to get prohibition orders from the court against the peaceful protests that were being carried out by trade unionists, political parties, university student unions and farmers were rejected by Magistrates¹². However, despite the court's refusal, the authorities continued to prevent protesters—following proper COVID-19 health guidelines—from demonstrating¹³.

Additionally, the continued attacks on journalists who were involved in investigative reporting were also witnessed during this period. In the year 2020 alone, at least 10 journalists were subjected to various impediments, including assaults, physical torture, questioning by police, and judicial harassment. These obstacles prevented them from participating in and reporting on events of religious rituals and remembrance on behalf of deceased family members of the Tamil community during the 30 years of civil conflict¹⁴.

Attacks on journalists were not limited to mainstream media, but it was also extended to journalists involved in new media such as YouTube channels, web-based newspapers and blogs. In several instances, social media users were also

10 Mahmud, M., "Anti-Muslim Hatred: Clouding the Fight Against Corona," Colombo Telegraph, April 2, 2020, <https://www.colombotelegraph.com/index.php/anti-muslim-hatred-clouding-the-fight-against-corona/>

11 5 PILLARS, "Sri Lanka Police Brutally Beat Up 14-Year-Old Autistic Muslim Boy", June 5, 2020, <https://Spillarsuk.com/2020/06/05/sri-lankan-police-brutally-beat-up-14-yr-old-autistic-muslim-boy/>

12 Ada Derana, "Court Rejects Police Request Against University Students Protest March", June 2, 2022, <http://www.adaderana.lk/news/82821/court-rejects-police-request-against-university-students-protest-march>

13 Monitor, "Sri Lanka Authorities Crack Down On Protests, Stifle Critics And Accused Of Torturing Detainees", September 5, 2021, <https://monitor.civicus.org/updates/2021/10/05/sri-lanka-authorities-crack-down-protests-stifle-critics-and-accused-torturing-detainees/>

14 Every year on May 18, Sri Lankan Tamils mark Mullaivaikkal Memorial Day commemorating those who died in the civil war that ended in 2009. In recent years the authorities have sought to suppress the commemorations, issuing court orders, intimidating participants, shutting down events, and even detaining mourners over allegations of terrorism.

called to the Criminal Investigation Division (CID) of police for questioning their posts about COVID-19-related malpractices by authorities.

The prolonged culture of disrespecting human rights and fundamental freedom with authoritarian decisions and practices in the Sri Lankan governance system was cherished through COVID-19 preventive measures. Both arbitrary violations of constitutionally guaranteed fundamental rights and values protecting a pluralistic society under the influence of COVID -19 prevention regulation were evident along with disregarding the voices of minority groups throughout the pandemic period. The ignorance of cultural and religious beliefs and norms by military decision-makers, who handled the COVID-19 pandemic administration process with authoritative powers, led to the creation of greater public dissatisfaction with the government's crisis management strategies.

Youth and children were another highly affected marginalised group due to the prolonged closure of schools and higher education institutions. The online education system, introduced as a temporary solution to mitigate the loss of education during the pandemic, has exacerbated the inequality between affluent and disadvantaged families. As per academics, the coronavirus created a digital learning gap between students who can afford several online tuition classes from the best lecturers, and those who cannot afford nor have access to online learning¹⁵.

4. Repressive Laws and Policies:

4.1 Repressive laws or policies that existed pre-pandemic and continued during the pandemic

The legislative framework of Sri Lanka comprises many repressive laws that were initially introduced during the British colonial period, but continue to prevail till date—disregarding universally accepted human rights values—without any major changes¹⁶.

For instance, the Prevention of Terrorism Act (PTA)¹⁷, which was enacted by the parliament of newly independent Sri Lanka in 1979 as a temporary provision to tackle the attempts to change the government by 'elements or groups of persons or associates that advocate use force or commission of crime'¹⁸ is still being used as one of the main tools against HRDs. As a result, it was eventually made a permanent law in 1982, disregarding its draconian nature by subsequent authoritarian governments seeking to repress public activism¹⁹.

In addition to this, the Public Security Act, Police Ordinance, Penal Code, Criminal Procedure Code, Establishment Code, Quarantine and Prevention of Diseases Ordinance, as well as new laws such as the International Covenant on Civil and Political Rights Act, have widely been used to suppress peoples' rights throughout the pandemic period.

15 Fazlulhaq, N., "70% of Sri Lankan Students Have No Access to online Study", The Sunday Times, February 7, 2021, <https://www.sundaytimes.lk/210207/news/70-of-lankas-students-have-no-access-to-online-study-431769.html>

16 Amnesty International, "End the Use of and Repeal the Draconian PTA", Index: ASA 37/5241/2022 February 2022, <https://www.amnesty.org/es/wp-content/uploads/2022/02/ASA3752412022ENGLISH.pdf>

17 Act No.48 of 1979 <https://www.lawnet.gov.lk/prevention-of-terrorism-3/>

18 "Preamble," Prevention of Terrorism (Temporary Provisions) Act (No. 48 of 1979)

19 Under PTA, (Section 9) "any person arrested can be held for up to 12 months without charge and (Section 11) arbitrary orders can be made by the Minister of Defence, restricting freedom of expression and association, with no right of appeal in courts. According to Section 16, any confession or statement made under arrest is admissible in courts against the detainee himself and others. With many other provisions violating universally accepted human rights, the Act also lacks clarity in bail procedure."

Prevention of Terrorism Act

The PTA was used heavily during the ethnic conflict in northern part of Sri Lanka to arrest and detain people without any proper legal proceedings, pressurising them for forced confessions as well as for searching and sealing any location as per the leaders' political will²⁰. However, even 13 years after the culmination of the conflict, more than 300 Tamil and Muslims continue to be held in custody under PTA without any legal proceedings or support. Among these prisoners, there are some who have been detained for around 15 – 20 years by now²¹.

Following the Easter Sunday bombing in 2019, a larger number of Muslims were arrested and detained under PTA. These arrests were predominantly based on politically motivated complaints, which had no corroborative evidence. Along with the PTA, the President—under the Public Security Ordinance—re-imposed emergency regulations too, after the Easter Sunday bombing to ensure the maintenance of national security²². But once again, the emergency situation only became more repressive for the Muslim community.

For instance, the order to ban face veils in public places through revised emergency regulations—which can be seen as a result of anti-Muslim campaigns instead of security needs—explicitly affected religious beliefs and the rights to freedom of Muslim women. The ban was, however, automatically removed with the lapse of Emergency Regulation in August 2019.

However, following the 2019 and 2020 elections, in which Gotabaya Rajapaksha's government came into power, the use of PTA against minority groups including Muslims and political opponents

increased even further. Though it was not directly involved with the COVID-19 pandemic, it was connected with dissent against the government's repressive policies and practices justified using the pandemic situation. For instance, on May 16, 2020, a 25-year-old poet Ahnaf Jazeem was arrested for allegedly promoting extremism through his writings but was released on bail after 18 months²³.

In November 2020, Tamil journalist, Kokilan Thasan, was arrested using the PTA for allegedly posting several photographs commemorating Tamils lost lives during the war, on his social media account. Commemoration events of Tamils were prohibited using quarantine regulations. It was only after 7 months of silence that, on July 30, 2021, the Human Rights Commission of Sri Lanka (HRCSL), summoned the police to inquire about any material that substantiated reasonable grounds for the journalist's arrest and detention during the remembrance event. However, despite HRCSL's intervention, journalist Kokilan Thasan is currently still being held in detention²⁴.

The Former Governor of Western Province, Azad Sali, was arrested for making a statement during a press conference held on March 10, 2021 and kept in custody for 8 months until his fundamental rights petition was heard on December 2, 2021, which ultimately led to the announcement of his arrest to be unlawful²⁵. Three Tamil women, Diviniya, Jinitha and Thuvitha were also arrested under PTA only because of participating in Tamils' commemoration events. This was an indirect message for the Muslim community, just before and during the COVID-19 pandemic, that the criticising of government policies as a member of minority communities could land you in jail for a prolonged period, even without a proper allegation.

20 Centre for Policy Alternatives, "The Need to Repeal and Replace the Prevention of Terrorism Act (PTA)", May 9, 2013, <https://www.cpalanka.org/the-need-to-repeal-and-replace-the-prevention-of-terrorism-act-pta/>

21 Human Rights Commission of Sri Lanka, "Prison Study", January 2020. <https://www.hrcsl.lk/wp-content/uploads/2020/01/Prison-Report-Final-2.pdf>

22 "The Gazette of the Democratic Socialist Republic of Sri Lanka," No 2120/3, April 22, 2019, http://www.documents.gov.lk/files/egz/2019/4/2120-03_E.pdf

23 INFORM, "Repression of Dissent in Sri Lanka: Nov-Dec 2020", March 2021, [Repression of Dissent in Sri Lanka : Nov-Dec 2020 – INFORM](#)

24 Ibid.

25 Aithiya.lk, "Azad Sally has been Acquitted by the High Court", December 2, 2021, [Azad Sally has been acquitted by the High Court. - Aithiya](#)

The conflict between PTA and the Constitution in recognising the fundamental rights of arrestees and treating PTA detainees in terms of the presumption of innocence, remains a major fragility of the Sri Lankan legal system. Detainees' right to challenge the legality of their detention should neither be obstructed directly, or indirectly.

The International Covenant on Civil and Political Rights Act

The Sri Lankan International Covenant on Civil and Political Rights (ICCPR) Act²⁶, passed in 2007 to provide legislative recognition to human rights which have not been directly addressed in the constitution. This law has often been maliciously interpreted and exploited to harass religious minorities and violate freedom of expression during the pandemic period as well as before that. Section 3 (1) of the Act which states 'no person shall propagate war or advocate national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence'.

This section has largely been misinterpreted and seeded by the Sinhala Buddhist nationalists to pressurise the government for suppressing the freedom of expression of many individuals, especially the minorities. A person can be imprisoned for a maximum of up to 10 years under ICCPR Act²⁷. Independent interlocutors confirmed that the police made efforts to ban Tamil and Muslim protest marches in the Northern and Eastern Provinces, which took place from February 3-February 7, 2021. These efforts were observed using the ICCPR Act as one of the legal provisions in the courts.

Shakthika Sathkumara, an award-winning novelist, was arrested under the ICCPR Act in April 2019 for publishing a short story which was allegedly derogatory and defamatory to Buddhism²⁸. His bail application was rejected twice even when there existed no corroborative evidence to substantiate the alleged charges against him. He was granted bail after 127 days of arbitrary detention with the investigation of his case being concluded on June 25, 2019.

Ironically, Sinhala Buddhist nationalist groups involved in advocating religious and ethnic hatred against Muslims that constituted incitement of violence in Ampara and Digana towns in Sri Lanka in 2018 were not accounted for in a similar lawsuit²⁹.

The use of the ICCPR Act against the Muslim community and people who advocated for their rights intensified after the Easter Sunday attack by the arrest and prosecution all of the suspects under the PTA, in combination with the ICCPR Act. The Sri Lankan police even tried to pursue legal action against journalist Kusal Perera under ICCPR Act for writing a column on anti-Muslim violence³⁰. However, the effort failed due to a large public dissent against that. In another instance, Dilshan Mohamed, a researcher and activist campaigning against violent Islamic militancy was arrested on May 4, 2019 with charges under PTA and section 3(1) of the ICCPR Act³¹.

Further repression of innocent members of the minority communities were evident with the incident of arbitrary arrest of, Abdul Raheem

26 Act No.56 of 2007 <https://www.lawnet.gov.lk/wp-content/uploads/2016/12/INTERNATIONAL-COVENANT-ON-CIVIL-AND-POLITICAL-RIGHTS-ICCPR-ACT-NO-56-OF-2007.pdf>

27 CIVICUS, "Misuse of ICCPR Act and Judicial System to Stifle Freedom of Expression in Sri Lanka," July 05, 2019, <https://monitor.civicus.org/updates/2019/07/05/iccpr-act-and-judicial-system-being-misused-stifle-freedom-expression-sri-lanka/>

28 Amnesty International, "Sri Lanka; Writer Faces up to 10 Years Jail for Story: Shakthika Sathkumara", July 19, 2019, <https://www.amnesty.org/en/documents/asa37/0800/2019/en/>

29 Law and Society Trust, "Fact-finding Report on the Anti-Muslim Violence in the Kandy District March 2018," 2021, https://www.lstlanka.org/wp-content/uploads/2022/02/Kandy_fact-finding_report_English.pdf

30 Firstpost, "Sri Lankan Media Watchdog Slams Attempt to Arrest Journalist for Remarks on Anti-Muslim Riots", June 17, 2019, <https://www.firstpost.com/world/sri-lankan-media-watchdog-slams-attempt-to-arrest-journalist-for-remarks-on-anti-muslim-riots-6824571.html>

31 Human Rights Watch, "Sri Lanka: Muslims Face Threats, Attacks", July 37, 2019, <https://www.hrw.org/news/2019/07/03/sri-lanka-muslims-face-threats-attacks>

Masaheen for wearing a dress which had a print of a ship's helm (wheel) that was deemed to look like the Buddhist symbol Dharmachakraya³². Following her arrest, she was charged under the ICCPR Act and kept in remand until the Supreme Court verdict on her Fundamental Rights application³³. This act clearly reflects the malicious intention of suppressing minority communities and the government policy of blatant abuse of fundamental rights guaranteed by the constitution. The law's selective implementation was in fact, reaffirmed when a large number of Sinhala Buddhist youth and priests who incited hatred and communal violence in Kurunegala, Minuwangoda and Chilaw, just one month after the Easter Sunday incident in 2019 were not prosecuted³⁴.

During the COVID-19 pandemic, both the PTA and ICCPR Act were not directly used for issues related to the pandemic, but applied to many others such as protests against the government, and journalists who reported about militarised practices especially in North and Eastern provinces .

In incidents such as the arrest of Hejaz Hizbullah, a well-known lawyer and human rights activist, under the PTA due to his professional role in representing Muslims accused of having suspicious connections to the East Sunday attackers, the possible risks faced by minority communities are evident, even in general situations³⁵. In a context where the military was controlling every function related to the pandemic, minorities were largely affected. The

religious beliefs of Muslims and Tamil Christians were affected by the government's repressive decisions, such as mandatory cremation of dead bodies of coronavirus affected persons.

Public Security Ordinance and the Police Ordinance

The Public Security Ordinance is another legislation in Sri Lanka which has excessively been used in emergency situations ever since its introduction in the 1940s³⁶. The declaration of emergency with the spread of coronavirus was unconstitutional due to not following proper procedures, yet the Public Security Ordinance permits the executive to proclaim an emergency and deploy security forces for the purpose of ensuring law and order and maintaining supplies and services essential to the life of the community³⁷.

As a result, after the declaration of COVID-19 as an emergency situation, security forces (Sri Lankan Army, Sri Lankan Navy and Sri Lankan Air Force) were deployed to maintain quarantine centres, search close contacts of COVID-19 patients, and protect the lockdown areas³⁸. However, their role in carrying out these duties, especially with increased involvement to implement rule of law in the society, was sometimes maliciously oppressive. A widely shared photo in social media in June 2021 revealed a row of men kneeling in front of soldiers for reportedly violating Sri Lanka's current lockdown procedures³⁹.

32 Verite Research, "Understanding the Press Coverage on Religious Freedom", June 2019. <https://www.minormatters.org/storage/app/uploads/public/5e9/95e/181/5e995e1812f09655790369.pdf>

33 Mhomed, M.B., "Dress for Arrest - Unjust Police Detention After Easter Sunday", The Catamaran, August 21, 2019, <https://the-catamaran.org/?p=9131>

34 Wipulasena, A., "Abuse of ICCPR Act Has 'Chilling Effect' on Fundamental Freedoms", Sunday Observer, June 16, 2019, <https://www.sundayobserver.lk/2019/06/19/news-features/abuse-iccpr-act-has-'chilling-effect'-fundamental-freedoms>

35 Firstpost "Sri Lankan Media Watchdog Slams Attempt to Arrest Journalist for Remarks on Anti-Muslim Riots", June 17, 2019, <https://www.firstpost.com/world/sri-lankan-media-watchdog-slams-attempt-to-arrest-journalist-for-remarks-on-anti-muslim-riots-6824571.html>

36 International Commission of Jurists, "Sri Lanka: Briefing Paper - Emergency Laws and International Standards", March 2009, <https://www.icj.org/wp-content/uploads/2012/05/SriLanka-emergencylaws-advocacy-2009.pdf>

37 Section 5 of the Public Security Ordinance No 25 of 1947, <https://www.lawnet.gov.lk/public-security-2/>

38 Dr. Thesara V.P. Jayawardane, "Key Success Factors in Managing Covid-19 Outbreak: Role of the Defence Forces of Sri Lanka", International Journal of Business, Economics and Law, Vol. 24, Issue 1 (April), https://www.ijbel.com/wp-content/uploads/2021/02/IJBEL24_525.pdf

39 Mayank, A., "Sri Lanka to Probe Vital Social Media Image Showing Row of Men Kneeling in Front of Soldiers", INDEPENDENT, June 21, 2021, <https://www.independent.co.uk/asia/south-asia/sri-lanka-army-muslims-photo-b1869600.html>

Besides, at the time of the pandemic, the usage of ‘Police Curfew’—to restrict people’s movement in localities within one or more police divisions—was also widely observed. And even though the concept of police curfew has often been practiced in emergency situations as per the Police Ordinance, there exists no provision in the Sri Lankan legal framework that statutorily empowers the police to impose a curfew⁴⁰.

The authorities however, used Section 56 of the Police Ordinance—which provides every police officer with the responsibility of using his best endeavours and ability to prevent public nuisances under the Penal Code— as the basis for this practice⁴¹. But even this provision does not make any reference to the power of the police to make regulations that may curtail the right of movement within an area. Sections 261⁴² and 262⁴³ of the Sri Lankan Penal Code in fact, refers to ‘public nuisances’ that recognises the public right to safety but not the imposition of restrictions on their movements.

In the wake of larger public criticisms of unaccountability of government policies and the role of officers in implementing COVID-19 preventive measures, the police in April 2020 announced that critics of the COVID-19 prevention measures will

be arrested⁴⁴. According to the instructions issued by Chandana D. Wickramaratne, Inspector General of Police, police were allowed to arrest persons who ‘criticise’ officials involved in the COVID-19 response, or share ‘fake’ or ‘malicious’ messages about the pandemic.⁴⁵

According to the media, a total of nearly 20 arrests had been made under this decree for allegedly publishing or sharing misinformation⁴⁶. Several persons were brought before the Criminal Investigations Department (CID) for questioning about various statements they had published either in the print media or in social media. Prolonged interrogation is being used as a means of intimidating critics who reveal critical information.⁴⁷ A university student had been arrested for allegedly spreading a rumour that a special quarantine centre had been built for VIPs⁴⁸.

But even prior to these instructions, the police had arrested a journalist, Nuwan Nirodha Alwis for allegedly publishing unverified information about a suspected COVID-19 patient⁴⁹. Following his arrest, a medical doctor in a private hospital who was the source of information was also arrested. Both of

40 Centre for Policy Alternatives, “Curfew in Response to COVID-19: Legal Framework and Relevant Questions in Sri Lanka” April, 2020, <https://www.cpalanka.org/wp-content/uploads/2020/04/Brief-Guide-III-CURFEW.pdf>

41 Section 56. Police Ordinance. “Every police officer shall for all purposes in this Ordinance contained be considered to be always on duty, and shall have the powers of a police officer in every part of Sri Lanka. It shall be his duty(a) to use his best endeavours and ability to prevent all crimes, offences, and public nuisances ; (b) to preserve the peace ; (c) to apprehend disorderly and suspicious characters ; (d) to detect and bring offenders to justice ; (e) to collect and communicate intelligence affecting the public peace ; and(f) promptly to obey and execute all orders and warrants lawfully issued and directed to him by any competent authority.”

42 Section 261, Penal Code. “A person is guilty of a public nuisance who does any act or is guilty of an illegal omission, which causes any common injury, danger, or annoyance to the public or to the people in general who dwell or occupy property in the vicinity, or which must necessarily cause injury, obstruction, danger, or annoyance to persons who may have occasion to use any public right. A public nuisance is not excused on the ground that it causes some convenience or advantage.”

43 Section 262, Penal Code, <https://www.lawnet.gov.lk/penal-code-consolidated-2/>

44 Sri Lanka 2020 Human Rights Report, “Country Reports on Human Rights Practices for 2020,” Bureau of Democracy, Human Rights and Labor, <https://lk.usembassy.gov/wp-content/uploads/sites/149/SRI-LANKA-2020-HUMAN-RIGHTS-REPORT.pdf>

45 Gunatilleke, G., “Covid-19 in Sri Lanka: Is Free Speech the Next Victim?”, Oxford Human Rights Hub, April 16, 2020, <https://ohrh.law.ox.ac.uk/covid-19-in-sri-lanka-is-free-speech-the-next-victim/>

46 Sri Lanka 2020 Human Rights Report, “Country Reports on Human Rights Practices for 2020,” Bureau of Democracy, Human Rights and Labor, <https://lk.usembassy.gov/wp-content/uploads/sites/149/SRI-LANKA-2020-HUMAN-RIGHTS-REPORT.pdf>

47 The Morning, “Sri Lanka’s Rapidly Shrinking Public Space”, 2022, <https://www.themorning.lk/articles/161536>

48 Gunatilleke, G., “Covid-19 in Sri Lanka: Is Free Speech the Next Victim?”, Oxford Human Rights Hub, April 16, 2020, <https://ohrh.law.ox.ac.uk/covid-19-in-sri-lanka-is-free-speech-the-next-victim/>

49 Sri Lanka 2020 Human Rights Report, “Country Reports on Human Rights Practices for 2020,” Bureau of Democracy, Human Rights and Labor, <https://>

them were detained for two weeks before being released on bail⁵⁰.

These actions initiated by the police, were, nonetheless, prima facie arbitrary violation of peoples' rights since they massively violated freedom of expression ensured by Article 14 (1) a) of the Sri Lankan constitution. Accordingly, most of these arrests were made under the regulations under the prevention of the COVID-19 pandemic and were undermining the rights stipulated in the constitution.

4.2 Laws, policies and regulations introduced during the pandemic that had implications on civic space and human rights

Shortly after the early dissolution of the parliament, which was followed by the commencement of the nomination for Parliamentary Election in 2020, Sri Lanka was confronted with the outbreak of the COVID-19 pandemic. In order to curb the spread of the virus, the President's Media Division (PMD)—as advised by health authorities—imposed an island-wide curfew from March 20, 2020⁵¹. By that date, Health authorities had identified at least 72 COVID-19 cases, a majority of whom were among the close associates of the Sri Lankan migrant workers who had returned from Italy amidst the pandemic⁵².

And as the number of those infected and COVID-19 related deaths continued to rise, the government had to initiate additional steps to control the spread of the virus. However, the government's unpreparedness to deal with a pandemic of this scale and failure

to adopt a set of scientific procedures to prevent the transmission of the virus, met with severe criticisms from various parties including health experts, opposition political parties, and human rights activists⁵³. The ignorance of the rule of law and arbitrary actions during the health emergency that, in fact, severely impacted the personal rights and respect of people in combating the pandemic, were listed among the top criticisms.

Nonetheless, it is important to understand that a few steps taken by the government such as partial lock downs, inter province travel ban, and restrictions on unsecure public gathering were necessary and important to curb the spread of the virus, and neither the government nor the responsible State institutions were in a position to ignore the existing legal framework—even when devising response strategies to the pandemic. However, during the pandemic, the government was widely seen as exploiting its powers to suppress and violate the right to freedom of expression, to target associations critical of the government's irrational policies, and to infringe upon individuals' rights to privacy and religious practices.

Violations of people's economic rights, including the right to food – by and large of daily wage earners – was more constant. Use of restrictions on public gatherings to suspend people's protests conducted according to the health guidelines, sudden military break-ins to arrest close contacts of COVID-19 patients, and shutdown of food and glossary shops for long periods of more than 3 days are a few examples⁵⁴.

lk.usembassy.gov/wp-content/uploads/sites/149/SRI-LANKA-2020-HUMAN-RIGHTS-REPORT.pdf

50 INFORM, "Repression of Dissent in Sri Lanka – Before and During Curfew", May 2020, https://www.inform.lk/wp-content/uploads/2020/05/ROD_Feb-Apr_2020.pdf

51 President Media Division, "Island-wide Curfew Imposed," PMD News, Presidential Secretariat, March 20, 2020, <https://www.presidentsoffice.gov.lk/index.php/2020/03/20/island-wide-curfew-imposed/>

52 ColomboPage, "Corona Vires Update; COVID-19 positive cases rise to 72 in Sri Lanka", March 20, 2020, http://www.colombopage.com/archive_20A/Mar20_1584717649CH.php

53 Centre for Policy Alternatives, "Is the Cure Worse than the Disease? Reflections on COVID Governance in Sri Lanka", August 13, 2021. <https://www.cpalanka.org/is-the-cure-worse-than-the-disease-reflection-on-covid-governance-in-sri-lanka/>

54 Colombo Page, "All Shops Closed for Three Days In Curfew-Imposed Areas to Restrict Public Movement" Oct 12, 2020, http://www.colombopage.com/archive_20B/Oct12_1602514238CH.php

Meanwhile many concerned parties remained reluctant to raise objections against the legality of the COVID-19 induced curfew, which was a severe misinterpretation on the part of the public health regulators. According to the government, imposition of curfew as a response to the pandemic, fell under the Quarantine and Prevention of Diseases Ordinance, 1897, where Section 2 of the Ordinance enables the Minister to issue regulations in order to prevent the introduction or spread of any disease within the country.⁵⁵

Section 3 (1) clearly provides that regulations made by the Minister under Section 2 could include:

- (a) placing aircraft, vessels and boats arriving at any port or place in Sri Lanka in quarantine, for the manner of disinfecting the same,
- (b) placing persons or goods coming or brought in such aircraft, vessels or boats in quarantine, for the manner of disinfecting or fumigating such goods,
- (c) prohibiting or regulating the landing of persons or goods from aircraft, vessels or boats either absolutely or conditionally,
- (d) establishing and maintaining quarantine stations, and for regulating the management of the same,
- (e) inspecting aircraft, vessels and boats leaving or arriving at any port or place in Sri Lanka,
- (f) inspecting persons travelling by railway or otherwise, and for segregating in hospitals or otherwise persons diseased, and
- (g) for isolating all cases of disease and diseased persons amongst other things⁵⁶.

The ordinance does not provide any powers to the Minister for imposing a curfew to deal with a pandemic situation. Even though Section 3(2)

does not restrict the power of the Minister, it cannot extend to a level of entrenching powers of the Ministry of Defense or the President under the Public Security ordinance. Consequently, the quarantine curfew imposed was clearly not within the permitted standards of the existing laws.

The 'quarantine curfew' imposed on March 20, 2020 extended for a prolonged period with occasional relaxations from time to time⁵⁷. However, these movement restrictions, especially those pertaining to inter-district travelling, affected the entire country and made life extremely difficult for millions of Sri Lankans. But least we forget, the term 'quarantine curfew' has not been mentioned anywhere in the Sri Lankan legal framework and was in fact, only declared through press releases issued by the PMD and the National Operation Centre for Prevention of COVID-19 Outbreak (NOPCO)⁵⁸. And this way of declaring a nation-wide curfew does not make it legally binding for the public.

Parliamentarian Mr. M. A. Sumanthiran, reaffirmed this point and stated that the curfew imposed to control the pandemic has no valid legal basis⁵⁹. He however, further stressed that even though the curfew had not been imposed properly, people should comply with the curfew for the sake of public health. But despite the non-legality of the curfew, thousands of people were arrested and vehicles confiscated by the police for violation of the movement restrictions. As per the police authorities, within a period of one month—from March 20–April 19—of the curfew being in force, a total of 33,155 individuals and 8,519 vehicles had been detained for violating the curfew⁶⁰.

55 Section 2 of the Quarantine and Prevention of Diseases Ordinance No.03 of 1897 - "The Minister may, from time to time, make, and when made revoke or vary, such regulations as may seem necessary or expedient for the purpose of preventing the introduction into Ceylon of any disease, and also preventing the spread of any disease in and outside Ceylon."

56 Section 3(1), Quarantine and Prevention of Diseases Ordinance No 03 of 1897, <https://www.lawnet.gov.lk/quarantine-and-prevention-of-diseases-4/>

57 Al Jazeera, "Sri Lanka Extends Nationwide Curfew to Fight Coronavirus Pandemic, March 23, 2020, <https://tinyurl.com/mr355zk5>

58 Centre for Policy Alternatives, "Curfew in Response to COVID-19: Legal Framework and Relevant Questions in Sri Lanka", April 21, 2021, <https://tinyurl.com/ypf57aj7>

59 Colombo Telegraph, "Sumanthiran Argues Curfew Illegal; Gets Ramanayake Released on Bail", April 20, 2020, <https://tinyurl.com/yc7y8ajr>

60 Colombo Page, "Sri Lanka: Police Arrest 1,475 People for Violating Curfew in Last 24 Hours", April 19, 2020, http://www.colombopage.com/archive_20A/Apr19_1587309025CH.php

With this ongoing debate regarding the legality of the COVID-19 induced curfew, civil society activists requested the Sri Lankan Human Rights Commission to intervene and advise the government to impose the curfew in a way that aligned with the country's existing legal framework⁶¹. As a result of which, the Minister of Health eventually released a series of regulations in the Gazette as per the powers vested to her under the Quarantine and Prevention of Diseases Ordinance⁶².

But one of the main issues associated with these regulations was the constant abuse of power to restrict people's fundamental rights, a practice that continued even after the mitigation of the pandemic situation. For instance, Regulation 98 stipulated that, 'Where the restriction of movement is lifted by the proper authority in any diseased locality in relation to the Coronavirus Disease 2019 (COVID - 19), every person who enters a public place or any other place where such person may come into close contact with another person or arranges or organises a meeting, seminar or any other similar gathering or obtains all services including essential services, shall comply such other disease preventive measures as may be determined, from time to time, by the proper authority.'⁶³

However, this regulation was mainly utilised against trade unions' actions and political activities organised against the government. On July 6, 2021, the police even announced that protests and public meetings were banned until further notice to contain the spread of the virus and expressed taking strict actions against those who violate quarantine

measures by participating in public protests and meetings⁶⁴. But two days after the ban, teachers' unions and students' unions got together to oppose the bill proposed by the General Sir John Kotelawala National Defense University (KNDU Bill), which alleged militarisation and privatisation of higher education in Sri Lanka⁶⁵.

The police subsequently arrested over 30 people who participated in the KNDU protest and brought them to court for violating quarantine regulations⁶⁶. And even when the court granted them bail, the police authorities prevented them from returning back to their home and forcibly took them to a quarantine center that was far away from Colombo without providing them with antigen or Polymers Chain Reaction (PCR) tests, or any instructions from a Public Health Officer⁶⁷.

In another protest staged against the increased fuel prices and controversial ban on chemical fertilisers by opposition political party Janatha Vimukthi Peramuna (JVP) with farmer organisations on July 07, 2021, 13 people had been arrested for violating COVID-19 prevention regulations. On the other hand, same regulations and repressive actions were not applied to the huge crowd that gathered during the swearing ceremony of the newly appointed Finance Minister, Basil Rajapaksha⁶⁸.

Besides this, the militarisation of the process—in the name of controlling the pandemic—through the construction of temporary quarantine centres and later administering of vaccination was also subjected to immense criticism. In fact, the entire process of maintaining quarantine centres was overwhelmed by

61 Colombo Telegraph, "Curfew Illegal: Sumanthiran urges Human Rights Commission to Intervene" May 03, 2020, <https://tinyurl.com/2a828cv6>

62 The Gazette of the Socialist Republic of Sri Lanka (Extraordinary) No. 2197/25, October 15, 2020, https://www.chamber.lk/images/COVID19/pdf/Englishversion_2197-25_E.pdf

63 "Quarantine And Prevention Of Diseases Ordinance (Chapter 22)", The Gazette of the Democratic Socialist Republic of Sri Lanka Extraordinary, No. 2197/25, 3, October 15, 2020, http://documents.gov.lk/files/egz/2020/10/2197-25_E.pdf

64 Colombo Page, "Sri Lanka bans protests and public meetings", July 6, 2021, http://www.colombopage.com/archive_21A/Jul06_1625587252CH.php

65 SamaraRatne, D., "With Militarization and Marketization of KNDU Bill Sound Death Knell for Higher Education", GroundViews, July 31, 2021, <https://tinyurl.com/2k6w9tcc>

66 "Protests greet KNDU Bill debate," the morning, July 28, 2021, <https://www.themorning.lk/protests-greet-kndu-bill-debate/>

67 **The Sunday Times**, "Police Action Against Protestors: Unions Express Concern, PHIs Deny They Gave Approval", July 11, 2021, <https://tinyurl.com/3xykzw3d>

68 Economy Next, "Forced Quarantine of Protesters: Teachers' Union in Sri Lanka Refused to Teach Online", July 12, 2021 <https://tinyurl.com/bdh3sarn>

army officials, instilling fear in the Tamil and Muslim communities about admitting themselves into quarantine centres and participating in the vaccine procedure. Tamil organisations and politicians have continuously called for the demilitarisation of the North-East.

Having the military oversee the public health policy and act as the State's first responders also normalises military occupation, exacerbates the existing ethnic divides, and further deteriorates human rights in north and eastern Sri Lanka⁶⁹. And while, at the beginning, the services provided by army managed quarantine centres were satisfying, the rapid increase in the number of detainees only brought to light several issues associated with the provision of basic facilities such as sanitation, hot water and freedom of people who were being quarantined in these centres⁷⁰.

The arbitrary nature of admitting COVID-19 patients into centres perhaps seemed similar to arresting criminals by security forces and putting them in jail, thus creating uneasiness in people's minds, and making them more and more reluctant to test for infections at government hospitals⁷¹. The majority of people living in war-torn North and East provinces already suffer from grave trauma to enter army-controlled spaces owing to their unfortunate experiences during the war, as well as in the post-conflict era. They in fact, suffered even more due to the lockdown policies, as many of those residing in North and East provinces—who suffered during the war—were now working as daily wage earners⁷².

The lack of attention of the government to ensure health and safety of garment factory workers who continued their work was observed as another major issue during the pandemic⁷³. It was also seen as leading to violate fundamental human rights of those works on many occasions. Following the larger COVID-19 cluster reported amongst garment factory workers in Katunayake Free Trade Zone during the second wave in Sri Lanka, a majority of women workers were affected by repressive military-led prevention practices of sudden round ups and forcibly being taken to quarantine centres⁷⁴.

A complaint made to the Sri Lankan Human Rights Commission revealed that military response during the quarantine process blatantly violated human rights and dignity. According to the complaint, in a Brandix-owned garment factory, a total 1,394 workers tested positive for COVID-19—on two occasions—the military had rounded up two hostels where workers stayed at Liyanagemulla and Averiwatta, in Katunayaka, and taken 98 individuals including 65 women, 1 pregnant woman and 3 children forcibly in the middle of the night.

They had been transported to a remote centre in Kalutara District which is far away from Katunayake⁷⁵. Detainees were not given enough time to pack their essential and sanitary items, and complained that they were not even provided water or food until the next day⁷⁶. Some individuals who had tested negative were also taken to the same quarantine centre, putting them at a risk to infect

69 International Commission of Jurists, "Sri Lanka: Vulnerable Groups Pay The Price for Militarization of COVID-19 response" October 10, 2020, <https://tinyurl.com/y32pnw6s>

70 Ibid.

71 Medico International, "Covid -19 - Model Country Sri Lanka?", February 10, 2021, <https://www.medico.de/en/model-country-sri-lanka-18106>

72 Medact, "Sri Lanka's Militarized Coronavirus Containment Has Grave Consequences, October 01, 2022 <https://www.medact.org/2020/blogs/sri-lanka-coronavirus/>

73 Human Rights Watch, "Sri Lanka: Protect Garment workers' Rights During Pandemic", July 12, 2021, <https://tinyurl.com/2bdjpmkn>

74 Sri Lanka Brief, "Sri Lanka: A Complaint Lodged Against General Shavendra Silva for Cruel, Inhuman and Degrading Treatment in Quarantining FTZ workers", October 17, 2020, <https://tinyurl.com/5yr5n5ap>

75 Sri Lanka Brief, "Sri Lanka: A Complaint Lodged Against General Shavendra Silva for Cruel, Inhuman and Degrading Treatment in Quarantining FTZ workers", October 17, 2020, <https://tinyurl.com/5yr5n5ap>

76 Ibid.

the virus⁷⁷.

The government's regulations regarding mandatory cremation of the bodies of COVID-19 deceased patients further generated controversy within the Sri Lankan society as it proved to be highly discriminatory for the Muslim community, since Islam considers burial to be required part of the final rituals in Muslim tradition⁷⁸. And while, other countries—across the globe—did allow both burial and cremation for the Muslims as per the World Health Organisation (WHO) guidelines⁷⁹, the Sri Lankan government, influenced by many anti-Muslim campaigners, claimed that such burials could result in underwater pollution with risk of spreading the COVID-19 virus⁸⁰.

The issue was taken to the Supreme Court by several aggrieved parties which included both Muslims and Christians through a fundamental rights application, and the Supreme Court rejected the application with the consent of majority judges without hearing⁸¹. However, owing to a continued public outcry and pressure from the international community, the government, about a year after, changed its policy, thereby allowing the burial of COVID-19 bodies⁸².

Moving on, the government regulations on restriction on movements and gatherings even long after the curfew was lifted was seen as an oppressive move against the Hindu Tamil communities. Following the end of the civil conflict, Tamils have been annually involved in commemorating their relatives who died during the war as a religious event.

The media however, reported that the preparation work for such an event in Kanagapuram of Kilinochchi District on November 15, 2020 was interrupted by the police using the above regulations⁸³. On November 17, 2020, Sri Lankan Army Commander Shavendra Silva warned that the commemoration of war victims would result in legal actions and isolation⁸⁴. The police also managed to get court orders to ban the same event scheduled to happen in the Northern and Eastern province⁸⁵.

Failure of the Sri Lankan government to introduce a sound legal framework for effective management of COVID-19 pandemic is one of the main reasons for many implications on civic space and human rights. Most of the regulations made under existing outdated draconian pieces of laws such as PTA, Public Security Ordinance and Police Ordinance extensively contributed to suppress people's rights instead of ensuring their freedom and wellbeing. The situation was further worsened with authoritative decisions taken for largely military supported COVID-19 responsive mechanisms.

4.3 Existing laws, policies, and mechanisms to challenge or mitigate the implications of repressive measures introduced during the pandemic

The legality of the curfew declared during the COVID-19 pandemic in Sri Lanka was a critical issue within the existing legal framework. The main issues with regard to the imposition of curfew was following proper procedure by the Executive President. He

77 Ibid.

78 Amnesty International, "Sri Lanka: Religious Minorities Must Have Their Final Rites Respected", April 03, 2020, <https://tinyurl.com/2dzjftu>

79 World Health Organisation, "Infection Prevention and Control for the Safe Management of a Dead Body in the Context of COVID-19", March 24, 2020, <https://tinyurl.com/4pfyp72d>

80 Human Rights Watch, "Sri Lanka: Covid-19 Forced Cremation of Muslims Discriminatory", January 18, 2021, <https://www.hrw.org/news/2021/01/18/sri-lanka-covid-19-forced-cremation-muslims-discriminatory>

81 Colombo Page, "Sri Lanka Supreme Court Rejects Petition Against Cremation Of Coronavirus Dead", December 1, 2020, http://www.colombopage.com/archive_20B/Dec01_1606845455CH.php

82 Al Jazeera, "Sri Lanka Finally Lifts Ban on Burial of COVID Victims", February 26, 2021, <https://www.aljazeera.com/news/2021/2/26/sri-lanka-finally-lifts-ban-on-burial-of-covid-victims>

83 Tamil Guardian, "Sri Lankan police disrupt Maaveerar Naal preparation in Kilinochchi," November 16, 2020, Access at <https://tinyurl.com/yvya4xkk>

84 Tamil Guardian, "Shavendra Silva 'Bans' Mahaveerar Naal and Warns Any 'Commemoration Will Result in Isolation and Legal Action'", November 17, 2020, <https://tinyurl.com/jeacjtr4>

85 Sri Lanka Brief, "Sri Lanka: 2020 Heroes' Day Commemorations Are Banned in North and East", November 21, 2020 <https://srilankabrief.org/sri-lanka-2020-heroes-day-commemorations-are-banned-in-north-and-east/>

has the power as per the Sri Lankan constitution to impose a curfew in emergency situations that is in line with the Public Security Ordinance⁸⁶. Such imposition of a curfew includes to develop emergency regulations which override, amend or suspend provisions of any law in operation except the provisions of the Constitution⁸⁷. However, he is not permitted to bypass law-making power of the parliament, as it requires obtaining approval from the parliament within a specific timeframe.

Article 76 of the Constitution in fact, specifies that the power vested with the president to make emergency regulations should not contravene the legislative powers of the parliament. Accordingly, the president's imposition of emergency regulation always needs to follow the guidance given in the Constitution. The Constitution provides that Emergency Regulations shall come into operation only upon the making of an announcement of a state of emergency in the country⁸⁸. It also requires the communication of such a proclamation to the parliament⁸⁹.

In a situation where parliament is dissolved prior to the issuance of the proclamation—unless the proclamation appoints an earlier date for the meeting—the parliament should be resummoned on the tenth day after the proclamation is released.⁹⁰ The parliament needs to approve such a proclamation by a resolution within fourteen days and failing to do so the proclamation would become expired.⁹¹

If such a proclamation is approved, it shall be in operation for a period of one month unless the President revokes it earlier.⁹²

According to Section 5 of the Public Security Ordinance, whenever the President thinks is necessary or expedient to the interest of public security, he is empowered to make emergency regulations for the preservation of public order and the suppression of mutiny, riot or civil commotion, or for the maintenance of supplies and services essential to the life of the community⁹³.

Such regulations can cover a wider scope related to public security, as well as the maintenance of essential services and the adding of new regulations, or altering or revoking the existing regulations by way of resolution to parliament is permitted⁹⁴. The PSO also empowers the president to impose a curfew under the provisions of third part of the ordinance which is titled as the 'special power of the president' to maintain public order in any area. According to Section 16 of the Ordinance, the president can declare a curfew, and it is mandatory to fulfill the procedural requirement of publishing such an Order in the Gazette⁹⁵.

The President is vested with this power to call upon the armed forces⁹⁶ when a public security situation arises in any area, as well as the authority to declare any service as an essential service⁹⁷ in the public interest, even without declaring an emergency situation, for the purpose of maintaining the same.

86 Article 55(3), the Constitution of Sri Lanka, 1978 “ The provisions of any law relating to public security, empowering the President to make emergency regulations which have the legal effect of over-riding, amending or suspending the operation of the provisions of any law, shall not come into operation, except upon the making of a Proclamation under such law, bringing such provisions into operation.”

87 Article 155(2) of the Constitution, <https://www.parliament.lk/files/pdf/constitution.pdf>

88 Article 155(3) of the Constitution

89 Article 155(4) of the Constitution

90 Article 155(4)(i) of the Constitution

91 Article 155(6) of the Constitution

92 Article 155(5) of the Constitution

93 Section 5(1) of the Public Security Ordinance No 25 of 1947

94 Section 5(2 & 3) of the Public Security Ordinance No 25 of 1947

95 Section 16(1) of the Public Security Ordinance No 25 of 1947

96 Section 12 of the Public Security Ordinance No 25 of 1947

97 Section 17 of the Public Security Ordinance No 25 of 1947

Since the curfew was imposed not by the president in accordance with the constitutional requirement, but rather through a proclamation instead of a notice from the President's media unit, it failed to meet the necessary legal validity⁹⁸.

Even though it is not necessary to declare a state of emergency under this section for imposing the curfew, according to Section 21 (2), an approval of the parliament under Section 2 of the Ordinance is needed before taking such an action. But, at the time of declaring the COVID-19 curfew, the President failed to meet the requirement of publishing it in a gazette and getting the approval of parliament.

Section 3 of the Public Security ordinance permits the President to re-summon the parliament in a situation if it is dissolved at the time of declaring curfew, and get the approval for curfew imposed by the President⁹⁹. Since, President Gotabaya Rajapaksa failed to follow this constitutional procedure, the quarantine curfew became legally invalid.

Following concerns raised by human rights defenders¹⁰⁰, and civil society organisations, the Human Rights Commission of Sri Lanka (HRCSL) also emphasised the importance of imposing a curfew following proper constitutional procedures to ensure the rule of law and human rights in the country.

The Commission in fact, reiterated its view that restrictions on freedom of movement (e.g., imposing a curfew, restricting movement to diseased localities) was a critical necessity in the interests of public health and public order during a health crisis of the nature that had gripped the country,

but such restrictions should not be in violation of the rule of law. The Constitution and international human rights obligations of Sri Lanka stipulate those restrictions to freedom of movement are legitimate only if imposed by law in order to achieve permissible objectives¹⁰¹.

Meanwhile, the court's intervention that essentially prevented people from protesting under the purview of COVID-19 restrictions varied widely as per the perceptions of each court. The police authorities were in fact seen exercising their maximum efforts to prohibit people's protests while permitting other forms of large gatherings such as National Freedom Day celebration, Kandy Dalada Perahera (annual Festival of the Tooth) and franchise cricket matches.

The Sri Lankan police even managed to get orders to prohibit the Potuvil to Polikandi (P2P) march—organised by Tamil and Muslim communities, as their political leaders demanded to put an end to the government's oppressive and discriminatory practices including continued militarisation of the North and East provinces, the ban on burying the bodies of Muslims infected with COVID-19, justice for the families of the disappeared, and the continuing detention of Tamil political prisoners¹⁰².

Army Commander Shavendra Silva referred to the P2P march as 'a show' ahead of the UN Human Rights Council session and stated that action would be taken against those who have violated 'COVID-19 restrictions.^{103'} The Public Security Minister also warned that the protesters would be arrested, and added that the authorities have protesters' photographs and their vehicle number, and 'know who these individuals are.^{104'}

98 Centre for Policy Alternatives, "Curfew in Response to COVID-19: Legal Framework and Relevant Questions in Sri Lanka", 21 April 2020, <https://tinyurl.com/3srppe9r>

99 Section 3(2) of the Public Security Ordinance No 25 of 1947

100 Colombo Telegraph, "Curfew Illegal: Sumanthiran Urges Human Rights Commission to Intervene", May 3, 2020, <https://tinyurl.com/2a828cv6>

101 Human Rights Commission of Sri Lanka, "HRCSL Recommendations on Regularizing the Imposition of Curfew", June 08, 2020, <https://www.hrcsl.lk/wp-content/uploads/2020/02/curfew.HRCSL-recommendation-final.pdf>

102 Thiruvarangan, M., "The P2P March and Beyond, Re-Imagining Resistance Amidst Ethnic Polarization", February 24, 2021, <https://tinyurl.com/4d29vzmf>

103 Srinivasan, M., "A Long March in Sri Lanka — to Register Protest, Forge A New Alliance", The Hindu, February 9, 2021, <https://tinyurl.com/4rhmxpmy>

104 Ganguly, M., "Thousands March for Justice in Sri Lanka, Despite Ban", Human Rights Watch, February 9, 2021, <https://www.hrw.org/news/2021/02/09/thousands-march-justice-sri-lanka-despite-ban>

However, The Additional Magistrate of Colombo pronounced a contrary view to such prohibition that the rights to expression, speech, and protest are constitutionally protected, and as such, these freedoms cannot be overridden by quarantine law¹⁰⁵.

Few other courts were also seen maintaining a similar view in several instances. It was also reported that the government allegedly tried to interfere with the independence of the judiciary, with the support of the Judicial Service Commission.

During a Judicial Service Commission meeting held in August 2021, Magistrates were reportedly instructed to use Sections 98 and 106 of the Criminal Procedure Code to control protesters and public gatherings amidst the health crisis¹⁰⁶.

4.4 Initiatives, good practices, and success stories

As per the importance of immediate and sound government measures required to combat the COVID-19 pandemic, the involvement of Civil Society Organisations (CSOs) in Sri Lanka for providing ground evidence remained considerably low. The government was instead seen repressing public dissent and accusing civil actors who raised their voices against unlawful government policies and practices¹⁰⁷.

However, despite the repression, some CSOs continued advocating against the misuse of existing laws, repressive policies, and measures introduced during the pandemic. Among them, the Centre for Policy Alternative (CPA) released

a series of publications analysing government policies, practices, and the legal framework linked to combating the COVID-19 pandemic issue.

They analysed the legal framework pertaining to the imposition of curfew, and broadly discussed questions of the legal validity of laws and policies applied to combat COVID-19 in Sri Lanka¹⁰⁸. Its report titled 'Brief guide-I on Evolving Legal Issues in the Context of COVID-19' pointed towards the concerns about governance and humanitarian issues that emerged as a response to the prolonged health emergency¹⁰⁹.

On November 06, 2020, the CPA published a 'Q and A' on regulations issued under the Quarantine and Prevention of Diseases Ordinance, analysing how this impacted the COVID-19 response in Sri Lanka¹¹⁰. CPA's publication of the comment on the legality of the State's response to the rights protest in the light of COVID-19 pandemic, contributed extensively towards creating a wider awareness regarding the impact of the government's repressive measures on the human rights of Sri Lankan citizens¹¹¹.

CSOs and human rights activists even initiated a petition against the forcible cremation of bodies of COVID-19 patients, as well as the suspected deaths, which gained the attention of many international actors, mounting pressure on the government to relax regressive regulations. With increased concerns from the international community, especially Middle Eastern countries that provide immense support to Sri Lanka, the government reverted its policy and provided approval to bury

105 Aazam Ameen, "Colombo Additional Magistrate educates police on people's rights and quarantine law," *The Morning*, 17th August 2021. <https://www.themorning.lk/articles/155747>

106 Sooriyagoda, L., "Judges and Lawyers Express Dismay Over Recent JSC Meeting", *Daily Mirror*, August 15, 2021, <https://tinyurl.com/349tcsuk>

107 West, C., & Godage, K., "Miracle Cure for COVID-19 in Sri Lanka: Kali and the Politics Behind 'Dhammika Paniya'", *National University of Singapore*, March 3, 2021, <https://ari.nus.edu.sg/20331-77/>

108 Centre for Policy Alternatives, "Curfew in Response to COVID-19: Legal Framework and Relevant Questions in Sri Lanka", April 2020, <https://www.cpalanka.org/wp-content/uploads/2020/04/Brief-Guide-III-CURFEW.pdf>

109 "Brief Guide I: Evolving Legal Issues in the Context of COVID-19," Centre for Policy Alternatives, 28th March 2020. https://www.cpalanka.org/wp-content/uploads/2020/03/Brief-Guide-I_Evolving-Legal-Issues-in-the-Context-of-COVID-19.pdf

110 "Q and A on Regulations Issued under the Quarantine and Prevention of Diseases Ordinance & how this impacts the COVID-19 response in Sri Lanka," Centre for Policy Alternatives, November 06, 2020. <https://www.cpalanka.org/wp-content/uploads/2020/11/Q-and-A-on-COVID-19-regulations.pdf>

111 Centre for Policy Alternatives, "Comment: the Legality of the State's Response to the Right to Protest in the Light of the COVID-19 Pandemic", November 2021, <https://tinyurl.com/3p6ubeau>

the bodies of COVID-19 patients at a government-reserved location as per the health guidelines¹¹².

Trade union activists, Chamila Thushari, Chandra Devanarayana, Ashila Dandeniya and Sr. Noel Christine Fernando who represented workers in Katunayaka Free Trade Zone lodged a complaint at Human Rights Commission against Lieutenant General Shavendra Silva, Commander of the Army and the Head of the National Operation Centre for Prevention of COVID-19 Outbreak (NOCPCO), for arbitrary violation of fundamental rights of garment factory workers by a military round up and forcibly taking them to remote centre in Kalutara District¹¹³.

The military-managed centre had failed to provide basic hygiene facilities for detainees along with several other problems¹¹⁴. This complaint became a success story since it led the HRC to issue a set of guidelines for security forces to handle such incidents with due respect to the people's rights and dignity¹¹⁵.

Many social media actors were involved in exposing government's irrational and unscientific campaigns promoting myths as COVID-19 responses. For instance, the government, including the Speaker of the parliament and Minister of Health, were often seen promoting a miracle cure—locally known as 'Dhammika Paniya'—for providing protection against the virus but such practices were increasingly criticised across different social media platforms.

5. Key Findings

The government of Sri Lanka initiated many efforts to combat the spread of COVID-19 and did achieve success in some areas such as accelerating the process of vaccination distribution, despite delays in the procurement processes owing to the problem of lack of foreign exchange availability. It was a real challenge for the Sri Lankan society to face the pandemic, especially as it suffered through the multiple issues that mostly related to its democratic governance system, human rights and rule of law in the country. The key observations related to pandemic responses are highlighted below:

- » Delays and blunder in response strategies accelerated the outbreak of the COVID-19 virus
- » Failure to provide the legal framework made lockdown unconstitutional
- » Militarisation of COVID-19 responsive mechanism disrupted significant contributions of health experts to combat the pandemic
- » Illegal police curfew violated fundamental rights and freedom of the people
- » Minorities were heavily affected by arbitrary COVID-19 responsive regulations
- » Social media played a main/crucial role to voice people's decent

112 The Indian Express, "Explained: Why the Reversal of Sri Lanka's Covid-19 Burial Ban Holds Geopolitical Significance," February 27, 2021, <https://tinyurl.com/52nc5snt>

113 Business and Human Rights Resource Centre, "Sri Lanka: Worker Groups File Complaint with National Rights Commission Over Alleged Arbitrary Detention of 98 Garment Factory Workers," October 17, 2020, <https://tinyurl.com/2cvsc4v3>

114 Sri Lanka Brief, "Sri Lanka: A complaint Lodged Against General Shavendra Silva for Cruel, Inhuman and Degrading Treatment in Quarantining FTZ Workers," October 17, 2020, <https://tinyurl.com/5yr5n5ap>

115 Human Rights Commission of Sri Lanka, "HRCSL Letter to the Head of the National Operation Centre for Prevention of COVID-19 Outbreak (NOCPCO)", May 11, 2021, <https://tinyurl.com/bp63kwfa>

The government was reluctant to limit foreign arrivals into the country since it could greatly impact the tourism sector, which was one of the main solutions to the foreign exchange crisis which the Sri Lanka economy had faced. Instead the government resorted to non-scientific, traditional methods, to prevent the outbreak of the coronavirus. It resulted in a deficiency in the government's accountability and transparency about political decisions right from the beginning of the COVID-19 outbreak and an unexpected speedy outbreak of the virus which could have been controlled at the beginning with minimal damage to the public's lives and the economic sector. Lack of accountability of administrative decisions of the government weakened the coordination between main sectors such as health, public administration, public security and transportation in fighting against coronavirus.

The announcement of the curfew and restricting people's movement in the absence of due legal process in fact, led to creation of many controversies and conflicts in the Sri Lankan society. The imposition of the lockdown was also widely criticised as an arbitrary political decision to curtail people's rights guaranteed by the Constitution. The President is empowered to act in a democratic and transparent manner by the Constitution and the Public Security Ordinance in an emergency situation. The President's failure to announce a quarantine curfew without adhering to the due legal procedure and getting the parliament approval in due time, reflected the authoritarian tendency of political leadership in decision making.

The undemocratic moves of the President ignoring the collective support of the parliament and its constitutional role, thus, resulted in a strong dissent from opposition politicians to his impractical strategies of pandemic control. Lack of clarity between the Constitutional provisions and the relevant sections of the Public Security ordinance may also be a reason for intentional deviation from the prescribed procedure in imposing curfew.

However, a mere media statement issued by the President's Media Division imposing health regulations or a legal order of curfew, was not sufficient justification. The heavily militarised process of controlling the pandemic instead of giving priority for health experts was subjected to severe criticism of opposition politicians, experts and trade unionists. Commissioning the military with immense power to handle the pandemic ultimately gave rise to distrust and fear of the minority community about the process. That resulted in their lack of volunteer support for COVID-19 preventive procedures introduced by the government.

The failure of militarised decision-making and implementation processes to respect human rights and cultural values resulted in larger dissatisfaction of the public about the role of the military. The close contact tracing and isolating process followed by the military was distressing for all citizens who faced the situation. The authoritarian decision such as banning the burial of bodies of COVID-19 patients disregarding WHO guidelines, led to provoke huge social polarisation based on religious beliefs and practices.

The quarantine regulations issued by the Minister of Health under the Quarantine and Prevention of Diseases Ordinance, the main legal provision used by police to arrest protesters, had no power to restrict fundamental rights such as freedom of speech, association and descent guaranteed by the constitution. Arbitrary use of power by the police in imposing regional lockdown, tracing associates of COVID-19-infected persons, and declaring police curfew was prominent throughout the period. The acts of police under the Penal Code and the Police Ordinance were also observed as exceeding their statutory limits.

Arbitrary arrest and remanding of protesters who followed all health guidelines and forcible reference to quarantine centres without the directions of the court or a Public Health Officer were against the rule of law of the country. The detention of protesters

in quarantine centres established for isolating COVID-19 patients was a punitive action that lacked legal merit.

However, the act of forcibly quarantining protesters— even after they had been granted bail— indicated that COVID-19 regulatory measures were being used as an extrajudicial punishment against human rights activists. Thus, many efforts observed during the COVID-19 outbreak to repress public protests on various issues were also unconstitutional and violated the fundamental rights of the people.

The cultural and religious insensitivity of the government while developing COVID-19 regulations created an adverse impact on minority communities. For instance, the government's regulation pertaining to the forcible cremation of dead bodies of COVID-19 patients created severe discrimination against Muslims given that burial is a critical religious practice of Islamic faith groups and Catholics.

It in fact, violated the constitutional guarantee related to the freedom of practicing religious faiths and beliefs. The failure of the government to adhere

to WHO's recommendations on the disposal of COVID-19 dead bodies led to many criticisms from national and international human rights actors.

Social media became an invaluable avenue to share information during the pandemic. The repressive policies and practices were heavily criticised through social media by both activists and experts. Issues such as delays of procuring COVID-19 vaccines, facilities and difficulties faced in quarantine centres, illegality of quarantine curfew, unethical promotion of indigenous medicine by the government and violations of rights of people were heavily discussed on social media.

With immense pressure through social media, the government had to reconsider some of its decisions such as employing the military for tracing close contacts of coronavirus-infected persons and durations of lockdowns. However, it cannot disregard the negative impact created by social media for the fight against coronavirus - sharing misinformation on traditional medicine for COVID-19 infections and hate speech against some of the community groups such as Muslims.

6. Recommendations

Recommendations to the Government

The legal framework related to addressing emergency situations including pandemics needs to be clearly specified to ensure mandatory adherence by the Executive and law enforcement agencies. The fundamental objective of the legislation should not deviate from protecting people's fundamental rights and their lives.

The conflict between provisions of the Public Security Ordinance and constitutionally guaranteed rights of the people need to be removed to ensure accountability of the Executive's decision in making emergency regulations. The restriction of rights up to a required minimum level by executive decisions based on the severity of a situation like a pandemic, need to be done only with the permission of the Supreme Court. Any political authority should not be permitted to be involved in arbitrary decision making without clear check and balance.

The government, especially the Executive, needs to ensure the adherence to due legal process at all times in declaring an emergency, and making also for all other regulations including ordinances. While the government should ensure the imposition of emergency by the office with due authority, it should also be accountable for preventing the arbitrary or misuse of such regulations by different authorities exceeding their power.

The government must also amend or provide clear interpretations to provisions of the Police Ordinance, which have been constantly used contrary to the rights of the citizens. Immediate attention should be paid to introduce new provisions to prevent suppressing people's rights through police duties.

The government should introduce a set of policy guidelines to follow in the decision-making and implementation process in emergency situations to avoid violating democratic norms, values and practices in future. The general administrative structure such as District and Divisional secretaries or health authorities in pandemic situations should not bypass and provide immense power to the military in controlling civil service, except in a situation of an armed conflict.

The government should also introduce policies to ensure space for civic engagement which encourage the public and civil society organisations to voluntarily adhere to strict policies in a situation of emergency, as opposed to forcible implementation. It is also important to listen to experts and professionals in the field and accumulate scientific knowledge prior to making administrative decisions in a situation like a health pandemic.

Recommendations to the Human Rights Commission of Sri Lanka

The Human Rights Commission should:

- (a) Give a policy guideline to the government to ensure a pluralistic, inclusive and unbiased decision-making process which is a key factor in a multi-cultural and multi-ethnic society. The HRC should intervene to ensure equal and unprejudiced application of policies with special consideration given to marginalised communities by the government.
- (b) Advise the relevant authorities to take necessary precautions to minimise the disproportionate impact on such communities.
- (c) Review the Public Security Ordinance in line with the Constitution to identify provisions which can create adverse impact over constitutionally guaranteed rights of people and propose an amendment to the government.
- (d) Implement a programme to educate all security personnel including the armed forces about respecting and protecting human rights.

Recommendations to the Civil Society Organisations

The engagement of CSOs is to ensure the democratic enactment of laws, policies and regulations and the monitoring of equal implementation are continued. Advocacy for reducing gaps in both policy and law-making, and implementation processes during emergencies need to be strengthened. Collaboration with the government in policy implementation would be the key role of CSOs during a pandemic to overcome the devastating impact on society.

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