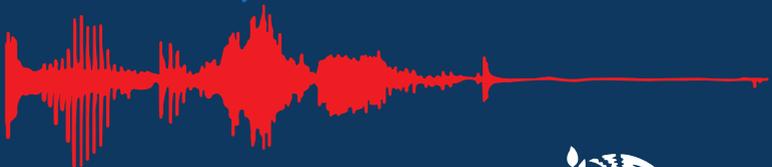


# Emerging Constraints on Freedom of Expression and Association in South Asia

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Published by :

**South Asians for Human Rights (SAHR)**

345/18 Kuruppu Road

(17/7 Kuruppu Lane)

Colombo 08, Sri Lanka

Telephone/ Fax: +94 11 2695910

Email: [sahr@southasianrights.org](mailto:sahr@southasianrights.org)

Website: [www.southasianrights.org](http://www.southasianrights.org)

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## PART 1

# Emerging Constraints on Freedom of Expression and Association in South Asia

## Introduction<sup>1</sup>

Freedom of expression and freedom of association are inextricably linked. Individual freedom of expression is incomplete without the freedom of association where people come together freely to express their collective views without fear. Both freedoms are being restricted in South Asian countries.

In most South Asian countries freedom of expression and association are constitutionally and legally guaranteed but they are being gradually eroded.

Freedom of expression is subject to “reasonable restrictions”. These restrictions are often defined by law on the grounds of security of the State, friendly relations with foreign States, public order,

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<sup>1</sup> Paper presented by Bharat Bhushan at the “Regional Consultation on the Restrictions on Freedom of Expression and Association”, 15 and 16 November 2019, Kathmandu, Nepal. The consultation was organised by South Asians for Human Rights (SAHR). Bharat Bhushan is a journalist based in New Delhi, India and can be contacted at [bharatbhushan11@gmail.com](mailto:bharatbhushan11@gmail.com)

decency and morality, contempt of court, defamation, incitement of offence, in some cases, blasphemy, and, almost always, integrity and sovereignty of the nation.

The restrictions on freedom of expression are also imposed by unwritten tradition and practice or codes as they have evolved over time. These 'codes' could also be voluntary, leading to self-censorship, e.g. in India there was, till recently, a practice of not naming the religion of rioters or those at the receiving end of inter-community violence; in Pakistan under certain prevailing conditions it is virtually taboo to discuss the civil-military relationship, etc.

The trouble with such codes is that while they may serve useful social functions in specific contexts, because they are unwritten and undefined, powerful sections of society can draw their own red lines wherever they want or defy accepted taboos altogether.

Freedom of association is also legally guaranteed but associations have to situate themselves within the context of certain laws for official recognition and for the use of public spaces. Thus, for example, for recognition of an association or to be able to work with others of similar motivation, it might be mandatory to register under the Society Registration Act, laws relating to charitable trusts, the Companies Act for a non-profit company, the Trade Union Act or the Cooperatives Act, etc. In order to prove that the association is a not-for-profit organisation, it would have to get certification under the Income Tax Act and if donations for running the association come from foreign sources, compliance would be required under the relevant laws governing such contributions or donations.

The laws shaping freedom of expression and association keep changing with new ones being added or old ones being made

more stringent or changing the mandatory frequency of renewal of licences or registration. Over time, these laws have become instruments of controlling freedom of speech and association by the State. They are not necessarily coercive but each time they are modified or changed, they set a new normal.

In this paper, the emerging and newer forms of restrictions on freedom of expression and association in South Asia will be discussed. These restrictions impinge not only on individuals and the media but also impact civil society organisations or Non-governmental Organisations (NGOs), as they are referred to in South Asia. They represent a combination of legal, semi-legal, outright illegal and extra-legal constraints on freedom of expression and association.

The factors that seem to be shaping freedom of expression and association broadly comprise the following:

1. Securitisation of public discourse,
2. FATF (financial Action Task Force) and restrictive finance legislations for NGOs,
3. Majoritarian politics,
4. Threats by non-state actors, and
5. Restrictions on social media and corporatisation of media.

Each one of these factors is discussed separately in this paper.

## Securitisation of public discourse

The safeguarding of sovereignty against seditious elements has emerged as the new concern of South Asian governments, especially in India, Pakistan and Sri Lanka. Under an antiquated law dating back to the late 19<sup>th</sup> century, critics of the government and dissenting voices are silenced by dubbing them anti-national and seditious.

In India, cases of sedition (i.e. attempting to overthrow the state through violent means) have blossomed since 2014 when the Hindu majoritarian government of Prime Minister Narendra Modi won a clear parliamentary majority. However, it is not as if sedition cases against public intellectuals and activists were not filed earlier. Binayak Sen, a doctor and activist of the Peoples' Union for Civil Liberties, who was critical of the violent policies of the Chhattisgarh state government against the Maoist insurgents, was arrested in 2007 allegedly for carrying a letter for the underground armed insurgents. He was convicted on sedition and conspiracy charges and sentenced to life imprisonment by a session court in 2010.<sup>2</sup> However, he was freed on bail by the Supreme Court which ruled that sympathy for Maoists does not amount to sedition.<sup>3</sup>

That has not stopped the Indian state from using the 1870 colonial sedition law against its critics. Sedition charges were framed against

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<sup>2</sup> Ruhi Tiwari, Binayak Sen gets life term for sedition. Live Mint, 24 December 2010. <https://www.livemint.com/Home-Page/KaCXfHUvbYoE3i747V5Y6K/Binayak-Sen-gets-life-term-for-sedition.html>

<sup>3</sup> Binayak Sen gets bail, The Economic Times, 16 April 2011. <https://economictimes.indiatimes.com/news/politics-and-nation/binayak-sen-gets-bail/articleshow/7997013.cms?from=mdr>

ten students of Delhi's prestigious Jawaharlal Nehru University for shouting "anti-India" slogans in February 2016. Two years later, in 2018, civil liberties activists, lawyers, teachers and journalists were arrested in after violence at a public protest in Bhima-Koregaon in Maharashtra for conspiring to overthrow the Indian government.<sup>4</sup> Hiren Gohain, a writer and critic, was charged with sedition along with two others for protesting against the Citizenship Amendment Bill because it sought to grant citizenship on sectarian religious basis.<sup>5</sup> In July 2019, 49 intellectuals, artistes, film stars and other prominent personalities were charged with sedition for writing a letter to the Prime Minister against mob-lynching incidents in the country. Subsequently, however, better sense prevailed as public pressure built on the government and the charges were withdrawn.<sup>6</sup>

That the misuse of sedition law in terms of designating someone a threat to the Indian State can be taken to ridiculous extents is evident in Jharkhand, a north Indian state. About 30,000 tribals from three blocks of a single district have been charged with sedition for planning stone plaques outside their villages with inscriptions

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<sup>4</sup> Rashmi Rajput, Accused were part of its larger conspiracy to overthrow the Indian government: Pune Police; The Economic Times, 22 February 2019. <https://economictimes.indiatimes.com/news/politics-and-nation/bhima-koregaon-police-file-supplementary-charge-sheet/articleshow/68105443.cms>

<sup>5</sup> Assam: Hiren Gohain, Akhil Gogoi Charged With Sedition for Opposing Citizenship Bill, 10 January 2019. <https://thewire.in/rights/assam-hiren-gohain-akhil-gogoi-charged-with-sedition-for-opposing-citizenship-bill>

<sup>6</sup> Sedition case against celebrities for writing to PM found false: Muzaffarpur police. The Times of India, 10 October 2019. <https://timesofindia.indiatimes.com/india/sedition-case-against-celebrities-for-writing-to-pm-found-false-muzaffarpur-police/articleshow/71509933.cms>. See also, Sedition Case for Open Letter: Over 180 Personalities Endorse Statement, Condemn Charges, The Wire, 8 October 2019. <https://thewire.in/rights/sedition-case-for-open-letter-over-180-personalities-endorse-statement-condemn-charges>

of the Fifth Schedule of the Indian Constitution which guarantees special rights to Adivasi and tribal areas. These tribal villagers have been designated as seditious for demanding their constitutional rights.<sup>7</sup>

Such is the prevalence of misuse of sedition law that The Telegraph wrote in its editorial comment: “The profiles of those charged indicate the type of people which governments, usually led by the Bharatiya Janata Party, wish to muffle. In 2014, 55 people were arrested for sedition, in 2015, 73 and in 2016, 33. Such lawless use of the law is truly dangerous. A democratic State is fighting its own people.”<sup>8</sup>

Prime Minister Narendra Modi has also made the nation security discourse an election campaign issue. Indeed he wondered in one of his campaign meetings in the last general election why his political opponents should object. “How can it not be one when so many common people lose their lives in terrorist attacks?... The perpetrators ought to be finished the way we did, by chasing them to their hideouts,” he said in an oblique reference to the Balakot air strikes in Pakistan.<sup>9</sup>

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<sup>7</sup> Jharkhand: Every 10th Adivasi in Khunti Dist Charged with Sedition for Resorting to ‘Pathalgarhi’, Newsclick.in, 20 July 2019. <https://www.newsclick.in/jharkhand-ev-ery-10-ativasi-khunti-dist-charged-sedition-resorting-pathalgarhi>

<sup>8</sup> A democratic State against its own people, The Telegraph, 18 January 2019. <https://www.telegraphindia.com/opinion/sedition-law-a-democratic-state-is-fighting-its-own-people/cid/1682016>

<sup>9</sup> The reason why PM Modi believes national security is an election issue; Business Standard, May 15, 2019. [https://www.business-standard.com/article/pti-stories/how-can-national-security-not-be-an-issue-asks-pm-modi-119051500347\\_1.html](https://www.business-standard.com/article/pti-stories/how-can-national-security-not-be-an-issue-asks-pm-modi-119051500347_1.html)

It is uncanny that military action against Pakistan, threats of war and of countering Pakistan-sponsored terrorism come on the eve of national or state elections. National security seems to have become a part of the election campaign rule book. Before the Uttar Pradesh state legislature election in February 2017, there was a “surgical strike” against terrorist camps in Pakistan administered Kashmir in September 2016; before May 2019 general election there was an air strike against Pakistan following a terrorist attack on a paramilitary convoy in the Kashmir Valley; and before the Maharashtra and Haryana legislature elections there was artillery attack on alleged terrorist camps across the Line of Control in Jammu and Kashmir.

The national security rhetoric of the state finds a force multiplier in the media. The 24 X 7 television news channels whips up public hysteria glorifying the armed forces and shut all dissenting voices as disrespectful of their sacrifices. If the incident checks all the boxes – Pakistan, terrorism, Kashmir, and the armed forces – the media goes to town drowning out all voices of reason, often dubbing them anti-national.<sup>10</sup>

John Dayal, a former Editor and human rights activist, thus says, “The deification of the armed forces has been at the cost of severe restrictions on articulating the situation in the border areas (with Pakistan) or politically fraught situations such as in Kashmir.”<sup>11</sup>

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<sup>10</sup> India’s media: Drumming the beats of war? Aljazeera.com, 25 February 2019. <https://www.aljazeera.com/programmes/listeningpost/2019/02/india-media-drumming-beats-war-190223075556841.html> and Vaishnavi Chadrashekhar, India’s media is war crazy, Foreign Policy, 1 March 2019. <https://foreignpolicy.com/2019/03/01/india-media-is-war-crazy/>

<sup>11</sup> Interview with John Dayal, 29 November 2019, New Delhi.

The national security constraints on freedom of expression in Sri Lanka have slightly different origins. Because of the prolonged war with the Liberation Tigers of Tamil Eelam (LTTE) in Sri Lanka, such was the securitisation of public discourse that it left very little space for dissent or offering opinions different from that of the state. “The regime of President Mahinda Rajapaksa wanted all media coverage of war to be played out as they decided and to their advantage. Thus media freedom and freedom of expression became anathema to the regime,” says Kusal Perera, senior journalist from Sri Lanka.

The national security discourse in Sri Lanka had a violent and gruesome manifestation during the course of the war against the LTTE. Perera recalls, “There were violent attacks on Sirasa TV, Siyatha TV was set on fire, the entire staff of news site Sri Lanka Mirror was arrested on trumped up charges and the Lankaenews office was attacked and set on fire”

As for editors and journalists questioning the war and its accompanying rhetoric, the state resorted to coercion, threats, physical attacks, abduction, torture and murder. Perera says, “The list includes, Keith Noyahr of the Nation newspaper who was abducted and tortured, Lasantha Wickrematunge, editor of Sunday Leader who was murdered, Upali Tennakoon editor of Rivira newspaper who was attacked, the editor of Uthayan and Sudar Oli, N Vithyanathan was abducted, tortured, beaten and then arrested and kept under remand for two months and Lake House journalist Poddala Jayantha was abducted and tortured for leading campaigns against threats to the media and media personnel as the President of the Working Journalists Association.”

After the war and beginning with the post-2010 presidential election -- especially after the defeat of Mahinda Rajapaksa in 2015 -- the situation improved. But the effects were not uniform and in military controlled Northern areas attacks on Tamil journalists continued.<sup>12</sup>

As for civil society organisations in Sri Lanka, during the war with the LTTE Tapan Bose, says, “They got suckered into peace making. The right to peace was considered the most important right and human rights groups turned into peace makers.”<sup>13</sup>

In Pakistan which has swung between military dictatorship and democracy, the armed forces and their intelligence wing the Inter-Services Intelligence (ISI) occupy an almost sacrosanct position in public discourse. It is because of the securitisation of public discourse that even the normally outspoken media of Pakistan hesitates to comment on civil-military relations.

Asha’ar Rehman, Editor of The Dawn in Lahore thus says, “Subjects such as civil-military relations are an uncertain area where you never know when you are going to be pulled up for crossing which line. The idea of freedoms by the right of expression selectively given to a few entails dangerous situations. For instance, a (retired) General or a well-established academic or a seasoned diplomat may get away with saying things that have never been heard before. But a novice or even a reasonable experienced commentator or an NGO activist

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<sup>12</sup> Chris Kamalendran, Uthayan news editor brutally attacked, 31 July 2011. [http://www.sundaytimes.lk/110731/News/nws\\_06.html](http://www.sundaytimes.lk/110731/News/nws_06.html) and Reporters Without Borders urges Sri Lankan authorities to ensure police stop harassing Tamil journalists, 4 June 2019. [http://www.colombopage.com/archive\\_19A/Jun04\\_1559669835CH.php](http://www.colombopage.com/archive_19A/Jun04_1559669835CH.php)

<sup>13</sup> Interview with Tapan Bose, Civil Rights Activist, 18 March 2019, New Delhi.

can land in serious trouble for violating an unspoken, unseen and undefined rule.”<sup>14</sup>

These rules it would seem are defined according to the whims of what in Pakistan is referred to as “the establishment”. The net results is that reporters and their newspapers can come under immense pressure as happened with Cyril Almeida. In his reportage in 2016, Almeida reported on tensions between the Nawaz Sharif government and the armed forces over the latter’s ties with terrorist groups. This resulted in his being put on an exit control list to prevent him from fleeing Pakistan. In 2018, he was charged with treason after an interview with former Prime Minister Nawaz Sharif where he seemed to reinforce Indian accusation that the Pakistan Army aided and the terrorists carry out the 26/11 attacks in Mumbai killing 160 people, including foreign tourists.<sup>15</sup> He was finally forced to quit journalism.<sup>16</sup>

Hamid Mir, a popular talk-show host was shot at multiple times in Karachi by unknown assailants. Writing in *The Guardian*, Mohammad Hanif, a well-known novelist and himself a former journalist with the BBC wrote: “Mir had warned about a possible assassination. He had also named his would-be killers. That’s what his brother claims, that’s what his colleagues and managers at the

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<sup>14</sup> Interview with Asha’ar Rehman on email on 19 October 2019.

<sup>15</sup> Treason Trial for Pakistani Journalist Signals New Pressure on Media, *The New York Times*, 5 October 2018. <https://www.nytimes.com/2018/10/05/world/asia/pakistan-journalist-treason-military.html> and Gul Bukhari, *The Print*, 28 September 2018. <https://theprint.in/opinion/arrest-warrant-against-cyril-almeida-shows-why-journalism-in-pakistan-is-dangerous/125955/>

<sup>16</sup> Pakistan Army killing press freedom? Award-winning journalist quits, *The Week*, 21 October 2019 <https://www.theweek.in/news/world/2019/10/21/pakistan-army-killing-press-freedom-award-winning-journalist-quits.html>

channel say. Geo, just after the attack, broadcast the allegation and, in an unprecedented move, also flashed the picture of the accused: the head of Pakistan's Inter-Services Intelligence chief, Lieutenant General Zaheer ul-Islam.”<sup>17</sup>

Not only individual journalists but the media houses which employ them are also targeted. Badar Alam, former editor of *The Herald* magazine, says, “Two of the largest media houses – Dawn Media Group and Jang Group – have been publicly targeted. The distribution of their newspapers had experienced blockades in many parts of the country, especially in garrisons and in military-run housing societies. So have the broadcast signals of their television channels.” Alam also points out, “Around half a dozen social media activists suddenly ‘disappeared’ (i.e. they were subjected to involuntary and enforced disappearance) from various parts of Pakistan ostensibly for criticising the state's intelligence and security agencies. Two of them accused their kidnapers of having tortured them in custody. Most importantly, all of them have left Pakistan after their release from custody.”<sup>18</sup>

Civil society organisations in Pakistan have often been labelled “foreign agents”. The relationship between NGOs and the Pakistani state began to spiral downwards in the wake of the US commando raid on Abbotabad in Pakistan that killed Osama Bin Laden in 2011.

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<sup>17</sup> Mohammad Hanif, *The Hamid Mir case: 'In Pakistan, they used to censor journalists – now they shoot us'*, *The Guardian*, 23 April 2014. <https://www.theguardian.com/world/2014/apr/23/hamid-mir-pakistan-journalist-shooting-isi-mohammed-hanif>

<sup>18</sup> Interview with Badar Alam on email, 17 October 2019.

“This has happened especially after Dr. Shakeel Afridi was accused of using the cover of an NGO to gather critical information that led to Osama Bin Laden’s extermination. The circumstances thrown up by the war on terror provided a hostile government opportunity to further the war against international NGOs. There was the question of their sources of finance but in the public sphere mainly there has been an emphasis on labelling these NGOs as unpatriotic,” explains Asha’ar Rehman.<sup>19</sup>

Eighteen international NGOs including the Open Society Foundations, Action Aid, and World Vision were told to wind up their operations by December 2018. Talat Masood, a retired Lieutenant General and military analyst told a news agency, “The intelligence agencies see western NGOs as proxies of foreign spy agencies because they are overly sensitive about the country’s nuclear assets and defence installations.”<sup>20</sup>

In Bangladesh as well there are instances of security concerns leading to ban on activities of NGOs and charities. Thus, for example, Dhaka ordered three charities -- Muslim Aid, Islamic Relief Bangladesh and Fazlullah Foundation – to stop providing relief to displaced Rohingya fleeing Myanmar due to security concerns. Although the government refused to give reasons for banning the activities of these NGOs in the Cox’ Bazar relief camp, it was suggested by government sources that the concerns related to

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<sup>19</sup> Interview with Asha’ar Rehman, op. cit.

<sup>20</sup> Pakistan charity crackdown spreads uncertainty among aid groups, EURACTIV.com with AFP, 31 October 2018. <https://www.euractiv.com/section/development-policy/news/pakistan-charity-crackdown-spreads-uncertainty-among-aid-groups/>

these NGOs radicalising the refugees and funding militants among them.<sup>21</sup>

Securitisation of the public discourse to constrain freedom of speech and association is linked to a host of restrictive legislations to limit them. They bear a separate discussion than mere securitisation.

## **FATF and restrictive financing legislation**

Restrictions on funding of NGOs and civil society groups have increased all over South Asia. Foreign funding for long has been monitored under prevention of money laundering laws but the onset of terrorism as exemplified by 9/11 attacks on the World Trade Centre twin towers in New York, led to governments agreeing to take specific measures to prevent terror financing and preventing money laundering. However, under the umbrella of laws to do so, various governments have used the opportunity to crack down on organisations which question their human rights or development record using various monitoring and bureaucratic mechanisms. They are easy targets because often the funding of these organisations is not from domestic sources but their funding cannot be called “terror financing” either.

How did this come about?

In 1990, because of a G-7 initiative came the guidelines of the Financial Action Task Force (FATF) on combating money

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<sup>21</sup> Mahadi Al Hasnat, Bangladesh govt bars 3 NGOs from Rohingya relief work over security concerns, Dhaka Tribune, 12 October 2017. <https://www.dhakatribune.com/bangladesh/nation/2017/10/12/bars-3-ngos-rohingya>

laundering and countering the financing of terrorism. These recommendations have now been widely accepted as part of the global good governance agenda. More than 180 countries have signed on to follow the FATF guidelines. The FATF is headquartered in Paris in the Organisation for Economic Cooperation and Development (OECD) and it has eight regional formations that monitor compliance of its guidelines around the world. The nations which have signed up to following the FATF guidelines “must introduce specific criminal laws, law enforcement powers, surveillance and data retention systems, financial services industry regulations and international police cooperation arrangements in accordance with FATF guidance.”<sup>22</sup>

A review of the implementation of the FATF guidelines noted: “While this was obviously not the intention of the seven governments that established the FATF, its evaluation system has endorsed some of the most restrictive NPO (Not-for-profit) regulatory regimes in the world, and strongly encouraged some already repressive governments to introduce new laws likely to restrict the political space in which NGOs and civil society actors operate.”<sup>23</sup>

These guidelines have been used to target all those NGOs or civil society organisations which the state finds inconvenient, all in the name of targeting terror-funding and preventing.

All South Asian countries are members of the Asia Pacific Group on Money Laundering (APG) of the FATF. Most are either already

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<sup>22</sup> Ben Hays, Counter-terrorism, ‘Policy Laundering’ and the FATF: Legalising Surveillance, regulating civil society, Transnational Institute/Statewatch, Reprinted by Indian Social Action Forum (INSAF), New Delhi, August 2014; p.9.

<sup>23</sup> *Ibid.* p.10.

FATF guidelines compliant or trying to comply as in the case of Pakistan which is currently on the Grey List of FATF.<sup>24</sup>

India joined the FATF in June 2010 and adopted the Foreign Contribution (Regulation) Act – FCRA, in August 2010. “The FCRA was implemented in compliance of FATF guidelines. It tightened financial monitoring of NGOs to prevent terror funding,” says Anil Chaudhary, of Indian Social Action Forum (INSAF).

A report on India adopting the restrictive new law notes:

“The Indian government drew-up new regulations in advance of the publication of the FATF report and adopted the Foreign Contributions Regulations Act (FCRA) in mid-2010. The FCRA was condemned by CIVICUS, a global civil society alliance, for allowing broad executive discretion to designate organisations as being of ‘political nature’ and prevent them from receiving foreign funds. This particularly problematic for organisations concerned with issues like human rights that rely more heavily on foreign grants to fund their activities. FCRA also places an arbitrary cap of 50% on the administrative expenses of an organisation receiving foreign funding; while those organisations that are given permission to receive funding from abroad must re-apply for permission from the government every five years.”<sup>25</sup>

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<sup>24</sup> Pakistan to remain on FATF grey list till February, The Economic Times, 16 October 2019. <https://economictimes.indiatimes.com/news/international/world-news/pakistan-to-remain-on-fatf-grey-list-till-february/articleshow/71610706.cms?from=mdr#:~:targetText=Pakistan%20to%20remain%20on%20FATF%20grey%20list%20till%20February,remain%20on%20its%20grey%20list>.

<sup>25</sup> *Ibid.* p.32.

Using the umbrella of the FATF and ostensibly to prevent terror-funding and money laundering, the Indian government cancelled the licenses of nearly 9,000 NGOs including Greenpeace and the Ford Foundation for failing to declare donations from abroad and not filing annual returns for three years starting from 2009/10.<sup>26</sup> A year later the number had doubled.<sup>27</sup> Some did not apply for the renewal of their foreign contribution licences while others were refused and had their registrations cancelled. Foreign contributions to NGOs, the government revealed dropped by one third between 2015-16 and 2016-17.<sup>28</sup> Today it is estimated that “NGOs in India have more reporting compliance requirements and stipulations than private companies that receive foreign revenue and remittances.”<sup>29</sup>

The Indian government has used the FCRA rules to target specific NGOs that have been critical of the government or taken to courts those in the Central government who have been complicit in inter-community violence, especially in Gujarat in 2002 when the current prime minister of India was the chief minister of the state.

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<sup>26</sup> India cancels licences of nearly 9,000 NGOs over foreign funds, Reuters, 28 April 2015. <https://in.reuters.com/article/india-charities-funding/india-cancels-licences-of-nearly-9000-ngos-over-foreign-funds-idINKBN0NJ15J20150428>

<sup>27</sup> Since 2014, 20,000 NGOs lost FCRA licence, Indian Express, 28 December 2016. <https://indianexpress.com/article/india/since-2014-20000-ngos-lost-fcra-licence-4447820/>

<sup>28</sup> The funding came down from Rs 17,773 crore in 2015-16 to Rs 6,499 crore in 2016-17. See, Licences of 4,842 NGOs cancelled in 2017: Government tells Lok Sabha, The New Indian Express, 2 January 2018. <https://www.newindianexpress.com/nation/2018/jan/02/licences-of-4842-ngos-cancelled-in-2017-government-tells-lok-sabha-1742509.html>

<sup>29</sup> FCRA Compliance in India: How 24,000 NGOs Lost Their License, India Briefing, 28 September 2017. <https://www.india-briefing.com/news/fcra-compliance-india-how-24000-ngos-lost-their-license-15287.html/>

The foremost among them is human rights activist Teesta Setalvad about whom the New York Times wrote:

“Few critics have pursued the Indian prime minister, Narendra Modi, more doggedly than Ms. Setalvad, the driving force behind an unrelenting campaign to hold Mr. Modi criminally responsible for riots in 2002 that killed more than 1,000 people in Gujarat, the state Mr. Modi ran before becoming prime minister.”

“But on the eve of court proceedings that could leave Mr. Modi facing criminal charges for the riots, it is Ms. Setalvad who is feeling the heat from his government. In the past few months, as she has assembled evidence in the case, Ms. Setalvad has been discredited, financially drained and nearly overwhelmed by a merciless campaign of leaks and attacks emanating from entities controlled by Mr. Modi or his political allies.”<sup>30</sup>

She and her husband Javed Anand have been harassed by raids by the Central Bureau of Investigation and have been accused of defrauding foreign donors by misusing and siphoning off funds. Setalvad’s NGO has been charged under Section 3, 11 and 19 of the FCRA Act of 2010 (criminal conspiracy and receiving funds illegally).<sup>31</sup> This is when the foreign donors like the Ford Foundation found their accounts perfectly in order with no irregularities.<sup>32</sup>

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<sup>30</sup> Long-time Critic of Modi Is Now a Target, The New York Times, 19 August 2015. <https://www.nytimes.com/2015/08/20/world/asia/teesta-setalvad-modi-india.html> and

<sup>31</sup> David Barstow, Modi government’s hounding of Teesta Setalvad is a message to all dissidents, Scroll.in, July 13, 2015. <https://scroll.in/article/740762/modi-governments-hounding-of-teesta-setalvad-is-a-message-to-all-dissidents>

<sup>32</sup> David Barstow, op.cit.

Another prominent case is that of the Lawyers' Collective run by former Additional Solicitor General of India and prominent Senior Advocate Indira Jaising. She and her husband Senior Advocate Anand Grover were also hauled up under the FCRA for using funds received from abroad for media advocacy and drafting the HIV/AIDS Bill. They were accused of holding "paid" agitations outside the Law Ministry on the need for the HIV/AIDS Bill which the Home Ministry claimed was violation of FCRA provisions.<sup>33</sup>

In Bangladesh too the control over foreign financing of NGOs has been tightened. According to the International Centre for Not-For-Profit Law:

"The key legal barrier to CSO resources in Bangladesh relates to foreign funding. As mentioned previously, the government established the NGO Affairs Bureau (NGOAB) within the Ministry of Establishment to coordinate and regulate the activities of CSOs operating with foreign funding. A CSO seeking to receive or use foreign donations must obtain approval, known as the FD Registration, from the NGOAB. Separate approval for all projects is required from the NGOAB, irrespective of prior registration by any other authority. The NGOAB is located in the Prime Minister's Office and is responsible for all contact with CSOs under the Foreign Donations (Voluntary Activities) Regulation Act, 2016."<sup>34</sup>

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<sup>33</sup> Targeted for human rights work: Indira Jaising, The Times of India, 12 July, 2019. [http://timesofindia.indiatimes.com/articleshow/70184428.cms?utm\\_source=contentofinterest&utm\\_medium=text&utm\\_campaign=cppst](http://timesofindia.indiatimes.com/articleshow/70184428.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst)

<sup>34</sup> Civic Freedom Monitor: Bangladesh, 19 July 2019. <http://www.icnl.org/research/monitor/bangladesh.html>

The Foreign Donations (Voluntary Activities) Regulation Act was passed in the Bangladesh parliament without debate and the government has been accused of enacting the law to “intimidate” groups critical of it. The NGOAB, which works under the supervision of the Prime Minister’s Office, gets the power under the new law to suspend the registration of an NGO or to close it down if it makes any “derogatory” remarks about the constitution or “constitutional bodies”.<sup>35</sup>

The Sri Lanka situation is peculiar because of the long history of the ethnic conflict in the island nation’s north and eastern regions. The funding of the Tamil insurgency by the Diaspora and the internationalisation of the conflict meant that the Buddhist Sinhala majority started viewing all NGOs receiving foreign funding with suspicion. They were seen “as agents of Western countries and entities that had their own political and ideological agendas that were viewed as hostile to indigenous values and the interests of the majority community.”<sup>36</sup>

There have been a number of changes in the financial monitoring of the NGOs in the wake of the Tsunami of 2004 which had led to a considerable inflow of foreign funds being channelled through international NGOs. An amendment to the Inland Revenue Act in 2005 considered 3 per cent of the total amount received by an

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<sup>35</sup> David Bergman, Concerns raised over new Bangladesh NGO law, 20 October 2016. <https://www.aljazeera.com/news/2016/10/concerns-raised-bangladesh-ngo-law-161020121856969.html>

<sup>36</sup> Rohan Edrisinha, Sri Lanka, *The International Journal of Not-for-Profit Law*, Volume 12, Issue 3, May 2010. [http://www.icnl.org/research/journal/vol12iss3/special\\_5.htm](http://www.icnl.org/research/journal/vol12iss3/special_5.htm)

NGO as profit for purposes of tax. The Act was amended again in 2007 and 2008 which continued the policy of taxation.<sup>37</sup>

Foreign currency accounts of NGOs are regulated in Sri Lanka under the Prevention of Money Laundering Act of 2006, and it has been proposed that new law be enacted to mandate that all NGOs register under the Ministry of Defence or their bank accounts would be closed, barring them from receiving foreign funding. NGOs have also been restricted from participating in any media activities.<sup>38</sup>

Financial restrictions on NGOs receiving foreign funds have also been tightened in Pakistan under pressure from FATF. Early this year, in February 2019, after it was put on the “Grey List” by the FATF, Pakistan rejected the registration application of 42 NGOs that sought to sign Memorandum of Understanding with the Economic Affairs Division. Being included in the FATF Grey List means that the country’s monitoring and enforcement systems for money laundering and terror-financing are inadequate. In June 2019, the National Counter-Terrorism Authority proposed new legislation for unified registration and regularisation of NGOs and not-for-profit organisations to meet the compliance standards of FATF. In February 2020, Pakistan may face further action including being put on the FATF “Black List” if it fails its compliance test.<sup>39</sup>

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<sup>37</sup> Siddharth Awadhoot, Comparative analysis of foreign contribution regulatory mechanisms in India, its neighbours, Counterview.org, 2 March 2017. <https://counterview.org/2017/03/02/comparative-analysis-of-foreign-contribution-regulatory-mechanisms-in-india-its-neighbours/>

<sup>38</sup> *Ibid.*

<sup>39</sup> Civic Freedom Monitor: Pakistan, 19 October 2019. <http://www.icnl.org/research/monitor/pakistan.html>

In Nepal, the federal government is in the process of drafting an umbrella law, the Social Organisation Act 2019, which would regulate every form of association. Due to opposition from civil society organisation the law is yet to be enacted.<sup>40</sup> In 2018, the Nepal government had proposed to bring in a mechanism to regulate NGOs called the “National Integrity Policy” to extend government control over the activities of national and international NGOs in the country. According to media to media reports the aim was to prevent international NGOs from influencing the Constitution drafting process. It stipulated that they would have to get their reports to their headquarters approved by the government, get their budgets and programmes approved by the finance ministry and threatened to ban them if they tried to spread religion.<sup>41</sup>

A comparative analysis of regulatory mechanism for NGOs in South Asian countries came to the following conclusion:

..The legal structure of regulating legal identity, accounting, auditing, funding of NGOs is similar and different in India, Bangladesh, Sri Lanka and Nepal on some or other points. ...However, one thing remains common in all their domestic legislations, which is the shift towards policies that control and regulate foreign funding received by NGOs, violating international standards of prescribing regulations and also thereby violating the spirit of the “Freedom of Association” .<sup>42</sup>

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<sup>40</sup> Civic Freedom Monitor: Nepal, 25 July 2019. <http://www.icnl.org/research/monitor/nepal.html>

<sup>41</sup> Martin Bader, In Nepal, proposed INGO regulation has sector fearful, devex.com, 1 May 2018. <https://www.devex.com/news/in-nepal-proposed-ingo-regulation-has-sector-fearful-92647>

<sup>42</sup> Siddharth Awadhoot, *op.cit.*

## Majoritarian politics silences minority expression

Majoritarian politics also seem to have emerged as a major restriction on freedom of speech and association in South Asia. Majoritarianism increasingly projects itself as the only form of acceptable nationalism and minority communities are by definition projected as anti-national or second-class citizens. Majoritarianism can be religious or ethnic and can be used to severely restrict the freedom of expression and association of the minorities.

Indeed, this seems to be happening across South Asia.

In India, the most egregious form majoritarianism under the Bharatiya Janata Party (BJP) government has been the proposed Citizenship (Amendment) Bill -- CAB. This proposed legislation aims to provide citizenship rights to those who have been forced to seek shelter in India because of religious persecution or fear of persecution in India's neighbourhood. It explicitly defines these communities as non-Muslim – i.e. Hindus, Sikhs, Jains, Buddhists, Parsis and Christians from Afghanistan, Pakistan and Bangladesh who have entered the country illegally, without valid documents or have overstayed the period stipulated in their visa or travel documents.<sup>43</sup> The Bill violates the Constitutional definition of citizenship which does not discriminate on the basis of religion. This has come alongside the National Citizens Register (NRC) in Assam which was meant to identify Bangladeshi illegal immigrants who entered the state after 24 March 1971. However, when the exercise was completed, it was found that more than half of those

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<sup>43</sup> Shaswati Das, Why citizenship amendment bill has created a row, LiveMint, 16 January 2019. <https://www.livemint.com/Politics/8s04csNI1p4FDDhKoMGPeP/Why-citizenship-amendment-bill-has-created-a-row.html>

excluded belonged to the majority community or were non-Muslims. The CAB will accommodate all of them as citizens while excluding the Muslims.<sup>44</sup>

There are fears that extending the CAB and NRC to the whole country, as the ruling BJP threatens to do, could also disenfranchise lifelong Indian Muslims, while giving a speedy route to citizenship for Hindu and other non-Muslim immigrants.<sup>45</sup>

Eminent political scientist Niraja Gopal Jayal points out:

Together, the NRC and the CAB have the potential of transforming India into a majoritarian polity with gradations of citizenship rights that undermine the constitutional principle of universal equal citizenship; with privileges of inclusion being attached to some categories of citizens while others suffer the disabilities of exclusion.<sup>46</sup>

The cultural nationalism or Hindu majoritarianism of the BJP has also led to cow vigilantes (Hindus trying to prevent cow slaughter using violent means) targeting Muslims over allegations of beef consumption. According to Human Rights Watch, between May 2015 and December 2018, at least 44 people – 36 of them

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<sup>44</sup> T K Rajalakshmi, Citizenship Amendment Bill: Divisive Bill, Frontline, 11 October 2019. <https://frontline.thehindu.com/cover-story/article29498656.ece>

<sup>45</sup> Namrata Kolachalam, India's Great Disenfranchisement, Slate, 9 August 2019. <https://slate.com/news-and-politics/2019/08/india-nrc-assam-modi-muslims-citizens.html>

<sup>46</sup> Niraja Gopal Jayal, Faith-based Citizenship: The Dangerous Path India is Choosing; India Forum, 1 November 2019. <https://www.theindiaforum.in/article/faith-criteria-on-citizenship>

Muslims – were killed in 12 Indian states over allegation of beef consumption or trading in cows. Around 280 people were injured in over 100 different incidents of cow related violence across 20 states.<sup>47</sup> This kind of religious aggression easily transforms itself into pushing a Hindu nationalist narrative down the throats of the minority communities. Thus there have been increasing incidents of unruly Hindu mobs beating Muslims to death for not shouting the Hindu religious slogan “Jai Sri Ram (Glory to Lord Ram)” have also increased.<sup>48</sup>

The net result of this is that the minority communities are being silenced and compelled to kow-tow to the religious sentiments and beliefs of the majority community. The initial years of the BJP government in India also saw religious “re-conversions” (ghar-wapsi or Return Home) of poor Christians and Muslims back to Hinduism. This activity increased in frequency particularly

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<sup>47</sup> Violent Cow Protection in India, Human Rights Watch, 18 February 2019. <https://www.hrw.org/report/2019/02/18/violent-cow-protection-india/vigilante-groups-attack-minorities>

<sup>48</sup> Muslim boy who claimed he was set on fire for not chanting Jai Shri Ram dies, India Today, <https://www.indiatoday.in/india/story/muslim-boy-who-claimed-he-was-set-on-fire-for-not-chanting-jai-shri-ram-dies-1575090-2019-07-30> and Accused Of Stealing, Muslim Man Made To Chant 'Jai Shri Ram' And Lynched, Huffington Post, 24 June, 2019. [https://www.huffingtonpost.in/entry/muslim-thief-made-to-chant-jai-shri-ram-and-lynched-in-jharkhand\\_in\\_5d0f282ae4b07ae90d9e56ac?guccounter=1&guce\\_referrer=aHR0cHM6Ly93d3cuZ29vZ2xlLmNvbS8&guce\\_referrer\\_sig=AQA-AAC13DxSN0g5Kail2n44Q1iMZXB6jKzvFNq-OEVInV03QI\\_XbMjb8CuYx-1zwrMaAAAbDfyB59vGmpUA5HU1xmuNuuTLJ\\_irRgGUdKIdI2kjhf3zt42rV-v3MNElicXkWlv2EkRhbwk74XjI7vKGVvAjlcHB\\_Rn1SyHq7NOB18dZ35qbW](https://www.huffingtonpost.in/entry/muslim-thief-made-to-chant-jai-shri-ram-and-lynched-in-jharkhand_in_5d0f282ae4b07ae90d9e56ac?guccounter=1&guce_referrer=aHR0cHM6Ly93d3cuZ29vZ2xlLmNvbS8&guce_referrer_sig=AQA-AAC13DxSN0g5Kail2n44Q1iMZXB6jKzvFNq-OEVInV03QI_XbMjb8CuYx-1zwrMaAAAbDfyB59vGmpUA5HU1xmuNuuTLJ_irRgGUdKIdI2kjhf3zt42rV-v3MNElicXkWlv2EkRhbwk74XjI7vKGVvAjlcHB_Rn1SyHq7NOB18dZ35qbW)

in the second half of 2014 and has continued sporadically since then.<sup>49</sup>

The issue of integration of Jammu and Kashmir was initially viewed as a security concern leading to militancy and terrorism. Now it is being addressed as a Muslim problem. The decision to abrogate the special status of the state and break it into two centrally governed territories or Union Territories is a step in that direction. The ruling BJP and its ideologues take inspiration from the Chinese policy of Han-isation of Xinjiang and there are apprehensions that they want to change the population profile of the Union Territory of J&K to make it a Hindu-Majority province. However, this project may not be easy to implement. If it is implemented, however, then the voice of the Muslims in J&K will be subdued and become a minority voice in the region.

In Pakistan, the freedom of expression of minorities is bound by the Islamic nature of the state. The version of majoritarian Islam that Pakistan seems to follow is Sunni Islam which is intolerant towards other off-shoots of Islam, such as Shias and Ismailies or Ahmedia Muslims. The Hindu and Christian minorities live under the fear of draconian blasphemy laws.

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<sup>49</sup> Ghar Wapsi continues in Kerala; 58 more embrace Hinduism, Rediff.com, 25 December 2014. <https://www.rediff.com/news/report/ghar-wapsi-continues-in-kerala-58-more-embrace-hinduism/20141225.htm>; Ghar wapsi' only way to end terror says BJP leader, The Hindustan Times, 25 December 2014. <https://web.archive.org/web/20141229063904/http://www.hindustantimes.com/india-news/newdelhi/ghar-wapsi-only-way-to-end-terror-says-bjp-leader/article1-1300421.aspx>; and for recent attempts see, Yogi effect: RSS men convert 43 Muslims in Uttar Pradesh to Hinduism, Scroll.in, 23 May 2017. <https://scroll.in/article/838416/yogi-effect-rss-men-convert-43-muslims-in-uttar-pradesh-to-hinduism> and 'Ghar Wapsi' bid in Tripura: 96 Christians 'reconverted' to Hinduism, Indian Express, 21 January 2019. <https://indianexpress.com/article/north-east-india/tripura/ghar-wapsi-bid-in-tripura-96-christians-reconverted-to-hinduism/>

Majoritarianism in Pakistan does not reflect itself only in terms of Islamic religious identity. It often also reflected as ethnic majoritarianism. “The state authorities have frequently targeted ethnic minorities – such as Baloch, Pakhtuns and Sindhis – since the creation of Pakistan and the situation remains the same even now,” says Badar Alam.<sup>50</sup>

In Sri Lanka, majoritarian political constraints on freedom of expression and association can be traced both to religious and ethnic majoritarianism and attempts to silence the minorities.

“The Sinhala Buddhist theocratic state plays a role independent of the government in curbing freedom of expression. This government is not prepared to challenge it. The Rajpaksas have a role in the “Deep State” that decides politics in Sri Lanka,” claims Kusal Parera, making a distinction between the formal government structure and the Buddhist “Deep State”.<sup>51</sup>

Citing a recent example, Perera argues, “Script writer Malaka Dewapriya, a young film maker and writer who wrote three radio plays for the State owned Sri Lanka Broadcasting Corporation was questioned under the ICCPR Act No. 56 of 2007 that was enacted to curb hate speech and extremist ethnic and religious activities but was used for curbing freedom of expression of a script writer who was arguing for social and ethnic peace. A statement condemning the suppression of Dewapriya’s freedom of expression by the media and Finance Minister of the government proves, that the government is helpless over Sinhala Buddhist extremism

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<sup>50</sup> Interview with Badar Alam, *op.cit.*

<sup>51</sup> Interview with Kusal Parera, *op. cit.*

intervening against freedom of expression that challenges Sinhala Buddhist extremism.”<sup>52</sup> There are other examples as well of how Sinhala Buddhist extremism tries to control creative space and freedom of expression by levelling charges of inciting religious hatred.<sup>53</sup>

In Nepal, ethnic majoritarianism is reflected in the Pahari-Madhese conflict and the complaint of the non-tribal, Hindu Indian - original inhabitants of the Terai plains - of inadequate political and economic representation and even ‘suppression’.<sup>54</sup> In Maldives and Bhutan, majoritarian constraints take religious form. In Maldives laws limit the individual’s freedom of expression to protect the basic tenets of Islam. Both the promotion of Islamic extremism and of other religions is prohibited.<sup>55</sup>

In Bhutan only Buddhist and Hindu religious associations are allowed and Christians feel state pressure to worship only at home. There were reports that a student was not allowed to graduate

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<sup>52</sup> Ibid. See also, Saman Indrajith, Mangala condemns censoring of three radio dramas, *The Island*, 24 August 2018. [http://island.lk/index.php?page\\_cat=article-details&page=article-details&code\\_title=190063](http://island.lk/index.php?page_cat=article-details&page=article-details&code_title=190063)

<sup>53</sup> For a debate on this issue, see for example, Arrest of writer Sathkumara sparks debate on freedom of expression, *Daily Mirror* online, 12 April 2019. <http://www.dailymirror.lk/news-features/Arrest-of-writer-Sathkumara-sparks-debate-on-freedom-of-expression/131-165392>

<sup>54</sup> Nepal's ethnic Madhese fight for dignity and equality, *Al Jazeera*, <https://www.aljazeera.com/indepth/features/2016/03/nepal-ethnic-madhese-fight-dignity-equality-terai-160318100945995.html> ; and Nepal's Terai: Constructing an Ethnic Conflict, *PRIO Briefing*, 2 October 2012. <https://www.fredsforbundet.no/fredsinitiativ/south-asia-peace-initiativ/2-sider/25-nepal-s-terai-constructing-an-ethnic-conflict.html>

<sup>55</sup> 2016 Report on International Religious Freedom – Maldives, *Refworld*, UNHCR, Last updated 3 December 2019. <https://www.refworld.org/docid/59b7d87c13.html>

because of her Christian faith and there is pressure on and discrimination against Christians.<sup>56</sup>

## Infringement by non-state actors

Non-state actors have also increasingly placed freedom of expression and association under severe constraints in some South Asian countries. The mind of the majority can be controlled by majoritarianism who can be non-state actors. That majority can be used in democracy to exclude and eliminate minority voices.

Anil Choudhary of INSAF points out, “In the last ten years in India a new tendency has become strengthened – the infringement of fundamental rights by non-state mechanisms. Today the State is not the sole violator of freedom of expression or association. Now non-state mechanisms have been created which do the same thing and the state plays the role of a facilitator. For example, you had the creation of a government sponsored militia, Salwa Judum<sup>57</sup>, to fight the Maoists and their sympathisers, private goons

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<sup>56</sup> Bhutan – 2018- International Religious Freedom Report, pp1-2. <https://www.state.gov/wp-content/uploads/2019/05/BHUTAN-2018-INTERNATIONAL-RELIGIOUS-FREEDOM-REPORT.pdf>

<sup>57</sup> In Gondi language of tribals, Salwa Judum means a “peace march” but in effect it was a militia or vigilantes created by the State which presented itself as peoples’ resistance to the Maoists. It was subsequently banned by the Indian Supreme Court as an illegal organisation. See, What is the Salwa Judum? News18.com, 5 July 2011. <https://www.news18.com/news/india/what-is-the-salwa-judum-381778.html> , and Salwa Judum is illegal, says Supreme Court, The Hindu, 1 October 2016. <https://www.thehindu.com/news/national/Salwa-Judum-is-illegal-says-Supreme-Court/article13639702.ece>

of big contractors, cow vigilantes, Kanwariyas,<sup>58</sup> and Hindutva organisations, to name just a few.”<sup>59</sup>

Among the Hindutva organisation, most of them offshoots of the right-wing Hindutva nationalist militia, Rashtriya Swayamsevak Sangh (RSS), which threaten public intellectuals<sup>60</sup>, break up public meetings and public performances<sup>61</sup> or beat up any critic of government’s security or Kashmir policy include Bajrang Dal, Vishwa Hindu Parishad, Sri Ram Sene, and cow vigilantes who call themselves Gau Rakshaks or protector of cows. They can appear under any name. For example, one of the vigilantes who beat up eminent human rights lawyer Prashant Bhushan for his comments

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<sup>58</sup> Devotees of Lord Shiva who are known to beat up people while carrying holy water from the Ganges to their local temples and who over time are seen as vandals who take over entire highways and beat up anyone who objects. A news report described them as: “A section of young Hindus, especially in north India, has started reviving and celebrating the ritual of collecting water from the holy Ganga and ferrying it in canisters to the village temple for pouring the water on the shiv lingam during the auspicious month of Shravan. This is derived from an age-old tradition of walking from one’s village to a pilgrimage site on (such as Haridwar, Gaumukh, and Gangotri in Uttarakhand) on the banks of the Ganga and returning to the village on or before shiv ratri.” See, Kanwar Yatra: Who are Kanwariyas, and what is the entire vandalism controversy? All you need to know about Kanwars, The Free Press Journal, 9 August 2018. <https://www.freepressjournal.in/cmcm/kanwar-yatra-who-are-kanwariyas-and-what-is-the-entire-vandalism-controversy-all-you-need-to-know-about-kanwars>

<sup>59</sup> Interview with Anil Choudhary, *op.cit.*

<sup>60</sup> BJP activists vandalise Tharoor’s office, ‘threaten to kill’ him, The Economic Times, 16 July 2018. <https://economictimes.indiatimes.com/news/politics-and-nation/bjp-activists-smear-black-oil-on-shashi-tharoors-office/articleshow/65009077.cms?from=mdr>; Anupama Katakam, Social activist Ram Puniyani gets threat to life, Frontline, 8 June 2019. <https://frontline.thehindu.com/dispatches/article27696941.ece>

<sup>61</sup> Anuja Jaiman, Under Modi, Hindu hardliners turn Indian theatre into a battleground, Reuters, 16 May 2019. <https://in.reuters.com/article/india-election-artists/under-modi-hindu-hardliners-turn-indian-theatre-into-a-battleground-idINKCN1SM0N0>

on Kashmir in 2011<sup>62</sup> claiming to be a member of the Bhagat Singh Kranti Sena by 2017 had been appointed by the ruling BJP's Delhi state unit. The movement from religious vigilante organisations to the BJP and even to governments led by it in states and in Delhi is far too well known.

There are other Hindutva organisations as well which have tried to silence the voices of rationalists and secular public intellectuals. The most notorious amongst them being the Sanathan Sanstha and Hindu Janjagruti Samiti. They have been accused of the murder of rationalist thinkers and writers including Narendra Dhabolkar, Govind Pansare, eminent writer and scholar M M Kalburgi, and journalist Gauri Lankesh.<sup>63</sup>

Such has been the anger generated by these murders and the atmosphere of intolerance created by these non-state actors, often

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<sup>62</sup> See, Prashant Bhushan beaten up for his Kashmir Comments, The Times of India, 12 October 2011. <https://timesofindia.indiatimes.com/india/Prashant-Bhushan-beaten-up-for-his-Kashmir-comments/articleshow/10327277.cms>; Two men who attacked Prashant Bhushan arrested, NDTV.com, 13 October 2011. <https://www.ndtv.com/india-news/two-men-who-attacked-prashant-bhushan-arrested-565448> and then, Tajinder Pal Singh Bagga appointed as Delhi BJP Spokesperson; A quick look at his career till now, altnews.com, 14 March 2017. <https://www.altnews.in/tajinder-pal-singh-bagga-appointed-delhi-bjp-spokesperson-quick-look-career-till-now/>

<sup>63</sup> Kamal Mitra Chinoy, Murders Most Foul: Years later, why are investigations of the deadly killings of rationalists and activists still pending?, dailyO.in, 18 March 2019, <https://www.dailyo.in/voices/narendra-dabholkar-gauri-lankesh-sanatan-sans-tha-hindu-janjagruti-samiti-rationalists-hindutva-supreme-court-mm-kalburgi/story/1/29950.html>

facilitated by the state, that artistes and intellectuals in India have returned their state awards *en masse*.<sup>64</sup>

A number of these vigilante organisations have gotten enmeshed with the state after the BJP ascended to power and operate with far greater impunity than previously. Many have started offering their services to facilitate access to the state. Choudhary points out that there has been a “mercenaryisation or commercialisation of the cadre” of the Rashtriya Swayamsevak Sangh (RSS), and “they have become middle-men for access to public services as well as public spaces.”<sup>65</sup>

Johan Dayal, a senior editor and former President of the All India Catholic Union, suggests that there is collaboration between the state and non-state or para-state organisations to curb the freedom of association when it comes to targeting minority Christian and Muslim groups. “The state impunity, the collaboration of the police in supporting these groups and not registering complaints of minorities or in fact arresting the victims and their relatives, the connivance of the local media, the attitude of the district bar associations and the bigotry of the lower judiciary in many cases makes it terribly silencing landscape for religious minorities and their advocates or spokespersons.”<sup>66</sup>

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<sup>64</sup> Indian writers return awards in protest against 'climate of intolerance', The Guardian, 14 October 2015, <https://www.theguardian.com/books/2015/oct/14/indian-writers-return-awards-in-protest-against-climate-of-intolerance> and Indian film-makers return accolades in protest at unsolved political murders, The Guardian, 29 October 2015. <https://www.theguardian.com/film/2015/oct/29/indian-film-makers-return-accolades-in-protest-at-unsolved-political-murders>

<sup>65</sup> Interview with Anil Choudhary, *op.cit.*

<sup>66</sup> Interview with John Dayal., *op.cit.*

There are two kinds of non-state actors in Pakistan – those that are used by the Pakistani state as strategic tools in Afghanistan (e.g. the Taliban, the Haqqani Group) and Kashmir (Jaish-e-Mohammad, Lashkar-e-Tayyeba, Jamat-ud Dawa, Hizbul Mujahideen, Harkat-ul-Mujahideen, etc); and those that owe their origin to Islamic sectarianism and schisms such as Sunni groups like Sipah-e-Sahaba (now, Millat-e-Islamiya Pakistan) and Lashkar-e-Jhangvi and their Shia counterparts like Sipah-e-Mohammad and Tehrik-e-Jaffria Pakistan (now, Islami Tehreek-e-Pakistan). According to a SIPTI report, the former overtime have wither turned against their masters in the Pakistani establishment and become involved in terrorist activities within the country. The latter target activists and leaders of rival sects.<sup>67</sup>

The SIPRI report notes: After September 2001, when the Pakistani Government's support for the international reaction to terrorism led it to reverse many of its policies that had been amenable to the jihadis, some jihadis also resorted to terrorist violence inside Pakistan, initially directing their attacks against foreigners and the local Christian population. Their use of violence has had a more pronounced political overtone and targeted assassinations seem to be their preferred mode."<sup>68</sup>

Minorities and their associations also come under attack in Pakistan. Asha'ar Rehman says, "Quite a lot of NGOs in Pakistan

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<sup>67</sup> Aarish Ullah Khan, *The Terrorist Threat and the Policy Response in Pakistan*, SIPRI Policy Paper no.11, Stockholm International Peace Institute, September 2005. <https://www.sipri.org/sites/default/files/files/PP/SIPRIPP11.pdf>; see also Zahid Hussain, *State and non-state actors*, Dawn, 13 January 2016. <https://www.dawn.com/news/1232557>

<sup>68</sup> Arish Ullah Khan, *op.cit.*

are working for the rights of minorities. A general swoop on the NGOs is obviously going to hit these minority-based NGOs.”<sup>69</sup> However, the only swoop on them is not of the State as Badar Alam points out, “Many non-state actors – both individuals and groups – have a long and known history of targeting various minority religious communities such as Christians, Hindus, Ahmedis and Shias.”<sup>70</sup> Blasphemy Laws seem to be the easiest recourse for non-state actors to silence or harass the minorities in Pakistan.<sup>71</sup>

In Pakistan, according to a report by FreeMuse and Shirkat Gah, a women’s resource centre: “Artists and audiences, including women and transgender artists, also face serious threats from non-state actors that further limit the right to artistic freedom of expression.”<sup>72</sup> The report gives examples of how music and dance in weddings has been banned in parts of Khyber Pakhtunkhwa as well as armed gunmen have abducted and killed transgender dancers. The report notes: “The Taliban’s war on music and dance, amongst other cultural traditions, especially in the Swat Valley, has left a lasting mark on the lives of not least female performers who are

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<sup>69</sup> Interview with Asha’ar Rehman, *op.cit.*

<sup>70</sup> Interview with Badar Alam, *op.cit.*

<sup>71</sup> Islamists misusing blasphemy law to harass Christians in Pakistan: Activists, India Today, 17 March 2019. <https://www.indiatoday.in/world/story/islamists-misusing-blasphemy-law-harass-christians-pakistan-activists-1479905-2019-03-17>

<sup>72</sup> State and non-state actors threaten artists in Pakistan: UPR report, FreeMuse, 3 April 2017. [https://freemuse.org/def\\_art\\_freedom/state-non-state-actors-threaten-artists-pakistan-upr-report/](https://freemuse.org/def_art_freedom/state-non-state-actors-threaten-artists-pakistan-upr-report/) ,

ostracised, struggle to make a living as artists, and whose profession is perceived as immoral.”<sup>73</sup>

Non-state actors in Sri Lanka have targeted Muslims, Rohingya refugees and as one witnessed over Easter, Christians and their churches. While extremist nationalist groups like Ravana Balakaya, Bodu Balaya or Bodu Bala Sena and Sinhala Ravaya have targeted Muslims, groups of die-hard radical Islamists of the National Thowheeth Jamaat were found to be responsible for the Easter church bombings.<sup>74</sup>

The ethnic and religious majoritarian nature of the Sri Lankan state has resulted in non-state actors targeting minorities in collaboration with the state “to produce a ‘persistent pattern of discrimination’ against religious minorities.”<sup>75</sup> The most extremist Buddhist group to target Muslims in Sri Lanka is the Bodu Bala Sena with its leaders claiming that Sri Lankans had become immoral and turned away from Buddhism. Oddly, they seem to hold Muslims responsible for this. They also target them claiming that they have high birth rates and can eventually “take over” Sri Lanka. The Sena is also believed

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<sup>73</sup> Universal periodic review – Pakistan 2017, FreeMuse and Shirkat Gah, 2017, p.12. [http://freemuse.org/wp-content/uploads/2017/09/UPR\\_Pakistan\\_2017\\_Freemuse\\_Shirkat-Gah.pdf](http://freemuse.org/wp-content/uploads/2017/09/UPR_Pakistan_2017_Freemuse_Shirkat-Gah.pdf)

<sup>74</sup> Local Group Is Blamed for Attacks, but Sri Lanka Suspects ‘International Network’, The New York Times, 22 April 2019.

<sup>75</sup> Gehan Gunatilleke, The Chronic and the Entrenched: Ethno-Religious Violence in Sri Lanka, International Centre for Ethnic Studies and Equitas – International Centre for Human Rights Education, 2018, pp.55-56. <http://ices.lk/wp-content/uploads/2018/04/The-Chronic-and-the-Entrenched-Mr.-Gihan-Book-FINAL-WEB-PDF.pdf>

to be linked to the 969 movement of Myanmar led by nationalist monk Ashin Wirathu, known as the “Burmese bin Laden”.<sup>76</sup>

In Bangladesh too non-state groups have threatened civil society activists from speaking out. A Human Rights Watch report notes: “Civil society groups faced pressure from both state and non-state actors, including death threats and attacks from extremist groups, and escalating harassment and surveillance by security forces. In June 2017, Islamist leaders threatened to “break every bone” of Sultana Kamal, a prominent Bangladeshi lawyer and rights activist, after she publicly opposed their campaign to dismantle a statue of Lady Justice outside the Supreme Court on the grounds that it constituted “idolatry,” violating Islamic tenets.”<sup>77</sup>

Secular bloggers have been hacked to death and gay journalists have been targeted for trying to hold public parades. The Economist in fact noted: “Bangladesh has become one of the most dangerous places on Earth to suggest in public that gay people might have rights or that Islam might not have all the answers. Since April (2016) eight people deemed anti-Islamic have been slaughtered. Rezaul Karim Siddique, a professor who celebrated indigenous music and literature, was all but beheaded on his way to work. Nazimuddin Samad, a young blogger who criticised Islamism, was

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<sup>76</sup> Violent Buddhist extremists are targeting Muslims in Sri Lanka, The Conversation, 26 April 2018. <https://theconversation.com/violent-buddhist-extremists-are-targeting-muslims-in-sri-lanka-92951>; for attacks on Rohingya refugees by Sinhala non-state actors, see also, Myanmar Style Vigilante Action By Sinhala Ravaya, Colombo Telegraph, 26 September 2017. <https://www.colombotelegraph.com/index.php/myanmar-style-vigilante-action-by-sinhala-ravaya/>

<sup>77</sup> Bangladesh events 2017, Human Rights Watch, <https://www.hrw.org/world-report/2018/country-chapters/bangladesh>

hacked and shot to death on the street by men shouting “Allahu Akbar!”<sup>78</sup>

While claiming that Bangladesh has never been safe and unrestricted space for freedom of expression, a report by Forum Asia notes that various governments have been in cahoots with non-state actors “to intimidate and threaten the personal life and liberty of independent journalists and writers” and “to restrict the freedom of peaceful assembly and association.”<sup>79</sup>

Indeed, it says: “The Government consistently used both state actors and non-state actors to deal with those who are not affiliated to the ruling party. Whenever the opposition tried to host peaceful protests and rallies against the Government or to communicate with their supporters through public meetings, the Government systematically used the state and non-state actors to drive away their targets. ... Bangladesh Government, as well as non-state actors, increasingly criminalise human rights activities, by branding civil society activists anti-state actor and foreign agents for extending moral support and exposing the truth. The arrest and detention of Shahidul Alam, a globally acclaimed photographer and writer, is one among many examples.”<sup>80</sup>

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<sup>78</sup> Free speech in Bangladesh. Muted by machetes; The Economist, 4 June 2016. <https://www.economist.com/international/2016/06/04/muted-by-machetes>

<sup>79</sup> Shrinking democratic space and freedom of expression in Bangladesh, Forum Asia, December 2018. Pp 17 and 23. [https://www.forum-asia.org/uploads/wp/2018/12/Shrinking-Democratic-Space-and-Freedom-of-Expression-in-Bangladesh\\_Dec-2018.pdf](https://www.forum-asia.org/uploads/wp/2018/12/Shrinking-Democratic-Space-and-Freedom-of-Expression-in-Bangladesh_Dec-2018.pdf)

<sup>80</sup> *Ibid.* pp.23 and 25.

Other commentators have also noted that Bangladeshi Islamist groups “have adopted extremist methods to target civil society members, religious minorities (Hindus, Christians, Buddhists, Bahais), Ahmadiyas, atheist bloggers, the lesbian, gay, bisexual and transgender (LGBT) community and progressive political activists.”<sup>81</sup> The Islamist organisation Hefazat-e-Islam has been particularly incendiary in its statements to foment hatred against the Ahmedis and its public demands have sought to undermine secularism in Bangladesh and anti-women, arguing against their education or demanding they be taught by only women instructors.<sup>82</sup>

Maldives shows how non-state actors who act in the name of religion can influence the State and force it to curb the freedom of expression and association.

In November 2019, the Maldivian government dissolved a non-partisan NGO, the Maldivian Democracy Network (MDN), which promoted human rights and democratic values. It was banned under pressure from Islamic scholars. The ban was over the contents of an MDN report of 2016 entitled “Preliminary Assessment of Radicalisation in the Maldives”. The report examined school text books on how Islam is taught and some Friday sermons incited hate and intolerance. After screenshots of the report were circulated on social media, some Islamic scholars launched a campaign against the NGO in October 2019.

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<sup>81</sup> Maidul Islam, *Crisis of Islamist Extremism in Contemporary Bangladesh*, Commentary, vol LI no 40. 1 October 2016. p.25. [https://www.cssscal.org/pdf/publication/maidul\\_islam\\_article\\_crisis\\_of\\_islamist\\_extremism\\_in\\_contemporary\\_bangladesh.pdf](https://www.cssscal.org/pdf/publication/maidul_islam_article_crisis_of_islamist_extremism_in_contemporary_bangladesh.pdf)

<sup>82</sup> Syed Badrul Ahsan, *Bangladesh: Hefazat and the rise of bigotry*, Observer Research Foundation, 21 February 2019. <https://www.orfonline.org/expert-speak/bangladesh-hefazat-rise-bigotry-48391/>

What started as an agitation by essentially “non-state actors” was backed by 140 out of 200m local councils in the Maldives. On October 10, 2019, the government imposed a “temporary cessation of activities” on the MDN and later dissolved it after two government ministries came to the conclusion that the report “mocked Islam and Prophet Mohammed”.<sup>83</sup>

## **Internet Surveillance and control**

The constraints on digital freedom keep grabbing the headlines as they continue evolving with the digital universe. They have been a subject of much controversy not only over digital platforms being taken to court for removal of objectionable content but even criminal cases being filed against them for users posting content that can result in social disaffection. While surveillance of digital media has been linked to issues of privacy, it also impact freedom of expression and association, guaranteed constitutionally in most South Asian countries. Governments can increasingly not only have access to telephone records but can also access content on smartphones, both legally through statutory means as well as illegally.

Legal experts have argued, “...if persons are not assured of privacy in their association with each other, they will tend to self-censor both who they associate with, and what they say to each other,

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<sup>83</sup> Maldives: Government Dissolves Human Rights NGO over Report on Radicalization, Global Legal Monitor, Library of the Congress, <http://www.loc.gov/law/foreign-news/article/maldives-government-dissolves-human-rights-ngo-over-report-on-radicalization/>

especially when unpopular groups, who have been historically subject to governmental or social persecution, are involved.”<sup>84</sup>

The spread of rumours, fake news and mis-information on the internet has resulted in real life violence. Therefore many governments want to regulate digital media. In the absence of adequate regulatory mechanisms, governments resort to internet or even telephone shut downs. The most blatant example of this was in India when in the first week of August 2019, the Indian government shut down all landline and mobile telephones as well as internet in Jammu and Kashmir. This communication shut down continued for three months.<sup>85</sup> It was described as “collective punishment” without the excuse of a precipitating offence, by UN experts.<sup>86</sup>

As for legal surveillance, it has been argued that the main threat to free digital expression in India comes from the Information Technology Act of 2000 and the modifications made in it after the Mumbai terrorist attack of 2008 centred on national security. In

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<sup>84</sup> Gautam Bhatia, Free Speech and Surveillance, The Centre for Internet and Society, 7 July 2014. <https://cis-india.org/internet-governance/blog/free-speech-and-surveillance>

<sup>85</sup> ‘I’m just helpless’: Concern about Kashmir mounts as communication blackout continues; The Washington Post, 6 August 2019. [https://www.washingtonpost.com/world/internet-mobile-blackout-shuts-down-communication-with-kashmir/2019/08/06/346d5150-b7c4-11e9-8e83-4e6687e99814\\_story.html](https://www.washingtonpost.com/world/internet-mobile-blackout-shuts-down-communication-with-kashmir/2019/08/06/346d5150-b7c4-11e9-8e83-4e6687e99814_story.html); also see the legal challenge to this order, Shutting down mobile, landline, internet in J&K for 90 days not temporary measure, SC told; The Economic Times, 6 November 2019. <https://economictimes.indiatimes.com/news/politics-and-nation/shutting-down-mobile-landline-internet-in-jk-for-90-days-not-temporary-measure-sc-told/article-show/71942361.cms>

<sup>86</sup> Kashmir communications shutdown a ‘collective punishment’ that must be reversed, say UN experts, UN News, 22 August 2019. <https://news.un.org/en/story/2019/08/1044741>

2011, new regulations were introduced which made it mandatory for intermediaries or internet service providers to take down content within 36 hours, irrespective of whether an individual, organisation of government body made the complaint. This has led to fears that “it makes intermediaries liable for content which they did not author on websites and platforms which they may not control and encourages them to monitor and pre-emptively censor online content, which leads to the excessive censorship of content.”<sup>87</sup>

In the meantime, prosecutions and persecution of citizens “for content deemed “grossly harmful”, “harassing”, or “blasphemous” has multiplied. Censorship through the criminalisation of online speech and social media usage is troubling, especially when it affects legitimate political comment or harmless content.”<sup>88</sup>

India has a large surveillance system and given its population this means that it covers 1 in 6 individuals on earth as more of its citizens go online. India has a large surveillance system called the Central Monitoring System (CMS) which operates under the Centre for Development of Telematics. The CMS will monitor a cross-section of data on internet and all electronic devices.<sup>89</sup>

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<sup>87</sup> India: Digital freedom under threat?, XIndex, 21 Nov 2013. [https://www.indexon-censorship.org/2013/11/india-online-report-freedom-expression-digital-freedom/#:~:targetText=Maintain%20their%20support%20for%20a%20multistakeholder%20approach%20to%20global%20internet%20governance.&targetText=%5B1%5D%20Article%2019%20of%20the,freedom%20of%20speech%20and%20expression.&targetText=\(1\)\(a\)%20All,accessed%20on%2023%20September%202013.](https://www.indexon-censorship.org/2013/11/india-online-report-freedom-expression-digital-freedom/#:~:targetText=Maintain%20their%20support%20for%20a%20multistakeholder%20approach%20to%20global%20internet%20governance.&targetText=%5B1%5D%20Article%2019%20of%20the,freedom%20of%20speech%20and%20expression.&targetText=(1)(a)%20All,accessed%20on%2023%20September%202013.)

<sup>88</sup> *Ibid.*

<sup>89</sup> Free speech, privacy and E-surveillance in the digital age, Observer Research Foundation, 26 February 2014. <https://www.orfonline.org/research/free-speech-privacy-and-e-surveillance-in-the-digital-age/>

There are apprehensions that the CMS is poorly regulated under the Indian Telegraph Act 1885. It empowers the government to intercept communications in the event of “public emergency” in the interests of “Public safety” when it is “necessary and expedient” to do so in the interests of sovereignty and integrity of the country, national security reasons, maintaining friendly relations with foreign states, maintaining public order and to prevent incitement to the commission of offences. The poor regulatory mechanism for CMS has led to fears about its potential misuse and violation of privacy as well as human rights.<sup>90</sup>

The other instance of illegal digital surveillance has been the hacking of WhatsApp on the smartphones of individuals which came to light after WhatsApp informed over 1400 targets world over -- more than one hundred of them were in India -- that their phones had been compromised. This mass surveillance, as yet not owned up by the Indian government, came to light because of the investigation by Facebook and Citizen Lab of University of Toronto which found that these individuals had been targeted using a spyware known as Pegasus, owned by an Israeli company, NSO Group.

There is yet another aspect of digital constraints on freedom of expression and association and that is the use of trolls to harass and intimidate social media users who offer contrarian views. Indeed, research shows that social media trolling of public intellectuals,

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<sup>90</sup> India's Central Monitoring System (CMS): Something to Worry About?, The Centre for Internet and Society, 30 January 2014. <https://cis-india.org/internet-governance/blog/india-central-monitoring-system-something-to-worry-about>

political leaders, journalists and actors in India has been organised by none other than the ruling party.<sup>91</sup>

In Bangladesh, up to 2018, the surveillance and monitoring of cyberspace was governed by the infamous Information and Communications Technology (ICT) Act which led to several journalists being prosecuted. It was replaced by the Bangladesh Digital Security Act (BDSA) in October of 2018.

Not only does the BDSA not rollback the pernicious aspects of the ICT Act which was used to silence the government's political opponents and critics, it makes matters worse by proposing a wide spectrum suppression of dissent and uses vague definitions of online activities designating them criminal.<sup>92</sup> It "criminalizes various types of online speech, ranging from defamatory messages to speech that "injures religious values or sentiments." It also authorises lengthy prison sentences for using the internet to create public unrest, and for "gathering, sending or preserving" classified government documents using a digital device."<sup>93</sup>

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<sup>91</sup> India's ruling party ordered online abuse of opponents, claims book, The Guardian, 27 December 2016. <https://www.theguardian.com/world/2016/dec/27/india-bjp-party-ordering-online-abuse-opponents-actors-modi-claims-book>; see also, BJP's troll army bullies, abuses and fights dirty with Narendra Modi as the general, Gulf News, 12 November 2018. <https://gulfnews.com/world/asia/india/bjps-troll-army-bullies-abuses-and-fights-dirty-with-narendra-modi-as-the-general-1.1541941374832>

<sup>92</sup> Rahul Krishna, How dissent is prosecuted in Bangladesh, Observer Research Foundation, 5 October 2019. <https://www.orfonline.org/expert-speak/how-dissent-prosecuted-in-bangladesh-56190/>

<sup>93</sup> Free speech advocates say Bangladesh's new Digital Security Act is 'ripe for abuse', Global Voices Advox, 28 September 2018.

What is significant is that an individual who feels defamed, or otherwise “injured” by a social media post or material does not have to file a complaint under BDSA as the ‘offender’ can be arrested on the basis of a simple complaint by a third party. “The supporters of the ruling Awami League party have exploited this rule to file numerous complaints alleging that online speech has defamed or prejudiced the prime minister, other government officials, or the ruling party”.<sup>94</sup>

Amnesty International has called the law an attack on freedom of expression and the Asia Internet Coalition has said that it would have a chilling effect on free speech, especially because of some of the sections are badly or vaguely drafted. These relate to “any type of propaganda or campaign against the Liberation War, the Father of the Nation, National Anthem or National Flag” (Section 21) and it “penalises individuals for content that is offensive, fear inducing, annoying” (Sections 25 and 31).” The coalition said that the understanding of these three words is “inherently subjective”.<sup>95</sup>

In the case of Pakistan, the Prevention of Electronics Crime Act 2016 is considered a controversial law as it seeks to restrict and censor content available on the internet under the guise of crime prevention and the punishments are disproportionate to the crime. The law also empowers the Pakistan Telecommunication Authority to remove and block content in the interest of the glory of Islam,

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<sup>94</sup> No Place for Criticism - Bangladesh Crackdown on Social Media Commentary, Human Rights Watch, 9 May, 2019. <https://www.hrw.org/report/2018/05/09/no-place-criticism/bangladesh-crackdown-social-media-commentary>

<sup>95</sup> Soumyarendra Barik, Bangladesh’s Digital Security Bill can have a ‘chilling effect on free speech’: Asia Internet Coalition, Medianama, 23 July 2019. <https://www.medianama.com/2019/07/223-bangladeshs-digital-security-bill-can-have-a-chilling-effect-on-free-speech-asia-internet-coalition/>

the integrity, security or defence of Pakistan, public order, decency or morality, etc.<sup>96</sup>

Even before the new cybercrime law came into being, the Enforcement Division of Pakistan Telecommunication Authority banned a video by Beygairat Brigade, a band known for satirizing the Pakistan military and politics. The ban was temporary and was revoked within a few hours. Pakistan has also banned YouTube frequently reacting to the availability of content-- cartoons, films, etc -- considered anti-Islamic. In fact, since it was last banned, YouTube was unavailable in Pakistan from 2013 to 2016 and the ban was revoked after Google, according to the government, “provided an online web process through which requests to blocking access of offending material can be made by the PTA to Google directly. Google/YouTube will accordingly restrict access to the alleged offending material for users within Pakistan.”<sup>97</sup>

In Sri Lanka, after the communal riots between the Sinhala Buddhist elements and the Muslim minority, Facebook, Viber, Instagram, and WhatsApp were blocked nationwide by the Telecommunications Regulatory Commission (TRC) and internet speeds slowed down in parts of the country. Four websites were also blocked during this period, which included two pornographic websites, a gossip site called gossipplanets.com but also the website Lankaenews.<sup>98</sup>

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<sup>96</sup> Universal Periodic Review ; Pakistan 2017, FreeMUSE and Shirkat Gah, op. cit. pp. 9-10.

<sup>97</sup> *Ibid.* p.10

<sup>98</sup> Freedom on the Net 2018 Sri Lanka, Freedom House, <https://freedomhouse.org/report/freedom-net/2018/sri-lanka>

It has also been reported that during President Mahinda Rajapaksa's regime "the TRC's interventions to restrict online content and pronouncements on strengthening online regulation were partisan, extra-legal and repressive."<sup>99</sup>

Extra-legal surveillance is prohibited under Sri Lankan law. However there have been reports that state agencies possess the means to do so. In 2015, Milan based Hacking Team was apparently approached by several Sri Lankan government agencies to acquire their patented digital surveillance technologies.

There is very little information available on internet surveillance in Nepal, Bhutan, Afghanistan and Maldives.

## **Corporatisation of media**

The corporate takeover of media, which has gained strength over the last couple of decades, has led to shrinking of space for freedom of expression as well as association.

In India it has already led to a loss of heterogeneity of information and opinions, reduction in media plurality, no space in public discourse for views unfavourable to the corporate world both in the legacy print and television media but also in the new digital media platforms, news increasingly becoming a commodity to

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<sup>99</sup> *Ibid.*

be marketed and the voices of the poor and marginalised being ignored.<sup>100</sup>

A result the public discourse is increasingly becoming monochromatic. The media has accepted the “dominant discourse” determined by the ruling elites and is used “to curtail the activities of civil society and silence critical voices. These groups are regularly accused of sedition, anti-national activities and undermining the unity and integrity of the Indian union. By perpetuating the ‘big power’ discourse, the media has also helped create a feeling of belligerence towards India’s neighbours, often adopting more hard-line positions than the government and egging it on to demonstrate its might when it comes to relations with countries in the region, particularly Pakistan, China and the Maldives. This rhetoric drives opposition politicians and the wider public discourse towards jingoism. ... Those who have no stake in this ‘big power’ discourse and feel left out of the policies that emanate from it are pushed away from mainstream political parties and towards insular political groupings and organisations.”<sup>101</sup>

As there are no laws banning cross-media holdings, the same groups dominate print, TV and digital platform. They are also more amenable to political and advertising pressures from the

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<sup>100</sup> Paranjoy Guha Thakurta and Subi Chaturvedi, Corporatisation of media, *Economic and Political Weekly*, Vol. 47, Issue No. 07, 18 Feb, 2012. <https://www.epw.in/journal/2012/07/commentary/corporatisation-media.html> and Paranjoy Guha Thakurta, What future for the media in India? Reliance takeover of Network18, *Economic and Political Weekly*, Vol. 49, Issue No. 24, 14 Jun, 2014, <https://www.epw.in/journal/2014/24/web-exclusives/what-future-media-india.html>

<sup>101</sup> Bharat Bhushan, *News in Monochrome: Journalism in India, Index on Censorship*, 1 July 2013, <https://journals.sagepub.com/doi/10.1177/0306422013493378>

government, which still remains a dominant advertiser across media platforms.

The situation is similar in other South Asian countries. Describing the situation in Pakistan, Badar Alam points out, “Over the last 18 years, private media has expanded enormously with many prominent business groups, which have varied business interests, starting their own media houses. Now Pakistan has around 40 news channels and a few hundred FM radio stations. Some of these business houses have started their own newspapers and magazines as well. They are in the news media business in order to increase their political clout and as a means of getting financial benefits and sops from the government rather than to serve the objective of freedom of expression. The state also finds them easy to control – by offering them economic benefits as well as threatening their financial interests one way or the other.”<sup>102</sup>

All kinds of businessmen are keen to get into the media business to further their interests. “To give you an idea, one of the most recent TV channel owners was renowned for making edible oil and *asli ghee*. Likewise, powerful people in the education, especially those running schools, are most eager to establish media houses – the explanation being that having a media outlet of your own reinforces your other businesses,” explains Asha’ar Rehman.<sup>103</sup>

Former Nepali editor Kishore Nepal claims that media owners have become “silent partners of the government”. “The corporate owners are not advocates of freedom of speech. They are looking

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<sup>102</sup> Interview with Badar Alam, *op.cit.*

<sup>103</sup> Interview with Asha’ar Rehman, *op.cit.*

for profit,” he remarks wryly.<sup>104</sup> Another eminent editor from Bangladesh, Syed Badrul Ahsan, laments that “newspapers and television in Bangladesh are today trapped in what is known as corporate culture. ... Media freedom in such conditions remains hostage to the personal propensities of media owners.”<sup>105</sup> Kusal Perera, an eminent columnist from Sri Lanka feels that media ownership give corporate owners leverage with the government and enables them to influence policy decisions.<sup>106</sup>

Yet another factor which limits freedom of expression is the political ownership of media. This is different from corporate ownership because it is openly partisan. However, problems arise when the political affiliation of the media platform are not transparent. This problem seems particularly acute in Sri Lanka where 75% of print media institutions apparently have political affiliations while 55% radio stations and 50% TV channels and 55 % of online media also have political affiliations.<sup>107</sup>

The only conclusion one can draw is because of both corporatisation and political ownership becoming dominant, plurality of media seems to be shrinking in the region and with it's the voices of the marginalised face the danger of being pushed out of the public discourse.

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<sup>104</sup> Interview with Kishore Nepal on email, 23 October 2019.

<sup>105</sup> Interview with Syed Badrul Ahsan, 20 October 2019.

<sup>106</sup> Interview with Kusal Perera, *op.cit.*

<sup>107</sup> Media Ownership Monitoring Platform reveals political affiliation data in Lankan media: See report with details, Times Online, 26 October 2018. <http://www.sunday-times.lk/article/1051811/media-ownership-monitoring-platform-reveals-political-affiliation-data-in-lankan-media-see-report-with-details> and Who watches the watchers?, <http://sri-lanka.mom-rsf.org/>

These new and emerging constraints on freedom of expression and association require new strategies of resistance. They may vary across constraints and nations. That is what needs to be discussed.

The problems that NGOs and civil liberties organisations face are illustrated by Anil Chaudhary who says in relations to non-state actors threatening these basic rights: “We don’t know how to fight non-state actors and mechanisms which infringe on fundamental rights. We have been trained to fight the State’s excesses. But this is a new phenomenon and a new challenge to NGOs and civil society organisations. Just two dozen people can come and disrupt a public meeting and we don’t know what to do with them. All the institutions we used to appeal to have broken down. So who do you approach and what do you do?”<sup>108</sup>

This problem of lack of coherent strategies to deal with these new challenges is not limited to only non-state actors. It applies equally to the other emerging constraints on freedom of expression and association.

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<sup>108</sup> Interview with Anil Chaudhary, *op.cit.*

## PART 2

# Regional Consultation Report

### Background and Objectives

South Asians for Human Rights (SAHR) organised a two day consultation meeting on the Restrictions on Freedom of Expression and Association in South Asia on the 14th and 15th of November, 2019. The meeting took place in Kathmandu, Nepal with the core objectives of developing a regional perspective and discussing possible action to protect the freedom of expression and association in South Asia, where the current governments in the region show an increasing tendency to restrict these freedoms.

This report aims to consolidate the presentations and discussions from the meeting for national groups to use later in their advocacy for protecting the freedom of expression in their own respective countries or regions. The consultation was organised with the following specific objectives:

1. To assess the various restrictions on the freedom of expression and association that are imposed by the governments in the region;

2. To examine the restrictions imposed on specific groups and sectors and the implications for the protection of the rights of various sectors;
3. To develop a regional perspective and discuss possible action.

## **Country Situations**

### ***Afghanistan***

Afghanistan has experienced many progressive changes in terms of Human Rights and the Freedom of Expression since the creation of a new constitution in 2004. The constitution provides the right to express one's ideas freely and also guarantees the right to access information. Despite this, the right to freedom of expression and association has constantly been curtailed by the government and by various other groups in the country. Afghanistan is ranked as the world's worst country for journalists.<sup>109</sup> The Afghanistan Times points out that there were 17 cases of murdered journalists in addition to other cases of beatings, intimidation and kidnapping, in 2018 alone. The threats to journalists and civil society organisations are directed by the government, ISIS, Taliban and paramilitary groups in the country. Among them, the greatest danger in terms of human rights is from the Taliban and ISIS. In 2016, ISIS killed 80 people and wounded 230 people of a minority group at a peaceful

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<sup>109</sup> Afghanistan Times. "Poll ranks Afghanistan the world's worst country for journalists." January 11, 2017. <http://www.afghanistantimes.af/poll-ranks-afghanistan-the-worlds-worst-country-for-journalists/>

protest.<sup>110</sup> Since then, people have been afraid of participating in protests.

## ***Bangladesh***

Bangladesh ranked 150th out of 180 countries in the Annual Press Freedom index in 2019, as the number of violence and criminalisation cases filed under the ICT Act increased.<sup>111</sup> The Digital Security Act which was passed in 2018 further retards the achievement of freedom of expression in the country. Abrar Fahad—a 21 year old engineering student was killed by his attackers—allegedly of the ruling party of Bangladesh, for sharing his opinion of Bangladesh’s water sharing agreement with India, through a Facebook post.<sup>112</sup> On August 2018, thousands of Bangladeshi high school students took to the streets demanding road safety measures and justice after two students were killed in an accident involving a speeding bus.<sup>113</sup> This peaceful protest was met with tear gas and rubber bullets by the authorities. Police stood by, watching as an 18 year old was beaten with sticks, pipes and machetes, allegedly by members of the Awami League student wing,

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<sup>110</sup> The Guardian. “ISIS claims responsibility for Kabul Bomb attack on Hazara protesters.” July 24, 2016. <https://www.theguardian.com/world/2016/jul/23/hazara-minority-targeted-by-suicide-bombs-at-kabul-protest>

<sup>111</sup> Adams, Brad. “Despite Denials, Bangladesh stifles Freedom of Expression”. Human Rights Watch, April 22, 2019. <https://www.hrw.org/news/2019/04/22/despite-denials-bangladesh-stifles-free-expression>

<sup>112</sup> Mahmud, Faisal. “Bangladesh student killing: Thousand protest demanding justice.” Al Jazeera, October 8, 2019. <https://www.aljazeera.com/news/2019/10/191007174829064.html>

<sup>113</sup> Kamrul Hasan, and Arifur Rahman Rabbi. “2 students killed, 7 injured in Airport Road accident.” Dhaka Tribune, July 29, 2018. <https://www.dhakatribune.com/bangladesh/dhaka/2018/07/29/2-students-killed-in-dhaka-road-accident>

for taking photographs of the protests.<sup>114</sup> Bangladesh's renowned photo journalist Shahidul Alam was detained for speaking with the international media about the student protests and linking them with the overall lack of democracy in the country. 19 other people were also arrested for speaking out against the violent crackdown.<sup>115</sup>

## India

India has now been a democratic nation for seven decades. But there are increasing concerns about its transition into being a totalitarian state, as the Bharatiya Janata Party (BJP) controlled government of India pushes to curb the freedom of expression and association of people. The government is now bringing in amendments to existing laws and formulating new laws targeting dissenters, critics of the government and persons seeking accountability while the sedition law from the colonial period is also being freely used to stifle criticism of the government. In 2017, 10,000 tribal people of Jharkhand were charged with sedition when farmers joined a movement protesting the forceful acquisition of their farms and pasturelands.<sup>116</sup> The number of instances of charges of sedition against intellectuals, journalists, Human Rights Defenders (HRDs), lawyers and students are rapidly increasing and while the general

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<sup>114</sup> Adams, Brad. "Wave of Arrests Follow Crackdown in Bangladesh." *Human Rights Watch*, August 13, 2018. <https://www.hrw.org/news/2018/08/13/wave-arrests-follow-crackdown-bangladesh>

<sup>115</sup> Adams, Brad. "Wave of Arrests Follow Crackdown in Bangladesh." *Human Rights Watch*, August 13, 2018. <https://www.hrw.org/news/2018/08/13/wave-arrests-follow-crackdown-bangladesh>

<sup>116</sup> Sharma, Supriya. "10,000 people charged with sedition in one Jharkhand district: What does democracy mean here?." Scroll.in, November 19, 2019. <https://scroll.in/article/944116/10000-people-charged-with-sedition-in-one-jharkhand-district-what-does-democracy-mean-here>

public is under mass surveillance, the Twitter accounts of people critical of the government have been shut down. The number of cases of intimidation, physical threats and murders of journalists has gone up. Recently, the citizenship of journalist Aatish Taseer was revoked for being critical of the Modi regime in his writing.<sup>117</sup> On top of all this, cases of human rights violations reached a peak in Indian-administered Jammu and Kashmir since August 2019, with a rise in the number of cases of illegal detention, the torture of civilians by the armed forces, the killing of protestors, communication shutdowns and many other such incidents.<sup>118</sup>

### ***Maldives***

The Maldives was an authoritarian state prior to 2008 and although the situation improved after that, the country's first democratically elected government was then overthrown, to be replaced by an authoritarian government in 2013. Thus, the Maldives has experienced a steady degradation of the freedom of expression and association over the last 5 years, together with an upsurge of religious extremism, xenophobia and racism. Journalists have been abducted and murdered; media houses, Human Rights Defenders (HRDs) and civil society organizations have been targeted—both by the state and other non-state actors, including fundamentalist religious groups. Journalist Ahmed Rilwan Abdulla was abducted and killed by an al-Qaeda affiliate in 2014, while blogger Yameen

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<sup>117</sup> E.Peterson, Hannah. "India strips overseas citizenship from journalist who criticized Modi regime." *The Guardian*, November 8, 2019. <https://www.theguardian.com/world/2019/nov/08/india-strips-citizenship-journalist-aatish-taseer-criticised-mo-di-regime>

<sup>118</sup> FIDH. "Update on Human Rights Violations in Indian-administered Jammu and Kashmir since August 2019." September 26, 2019. [https://www.fidh.org/IMG/pdf/20190926\\_india\\_j\\_k\\_bp\\_en.pdf](https://www.fidh.org/IMG/pdf/20190926_india_j_k_bp_en.pdf)

Rasheed was found dead at his apartment with multiple stab wounds.<sup>119</sup> Bowing to pressure from Islamic religious groups, the Maldives government recently shut down the Maldivian Democracy Network (MDN), which was the leading human rights organisation in the country, on charges of ‘mocking Islam and Prophet Mohamed’.<sup>120</sup> Freedom of association has also been blocked by the government and other non-state actors at several occasions; for instance in 2015 when migrant workers employed at luxury resorts were denied their right to hold peaceful protests through the threat of their visas and work permits being cancelled.<sup>121</sup>

## **Nepal**

With many of its South Asian counterparts competing and succeeding in reducing the democratic rights of their citizens, Nepal has not remained unscathed. Although Nepal has evolved somewhat to become a more open society when compared to the last decade, it is absorbing new values and methods of control from neighboring countries. The rise of populist leaders in Nepal is posing a severe threat to liberal values, to democracy and a pluralistic

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<sup>119</sup> Rasheed, Zaheena. “Missing Maldives journalist killed by al-Qaeda affiliate.” Al Jazeera, September 2, 2019. <https://www.aljazeera.com/news/2019/09/missing-maldives-journalist-rilwan-killed-al-qaeda-affiliate-190901121511620.html>; Al Jazeera. “UN wants probe into killing of blogger Yameen Rasheed.” April 22, 2017. <https://www.aljazeera.com/news/2017/04/probe-killing-blogger-yameen-rasheed-170425094743635.html>

<sup>120</sup> Maldives Times. “NGO shutdown ‘shows repression hasn’t gone away’: Amnesty.” November 6, 2019. <https://maldivestimes.com/ngo-shutdown-shows-repression-hasnt-gone-away-amnesty/>

<sup>121</sup> Jason Burket, and Zaheena Rasheed. “Maldives threatened migrant workers with expulsion over planned protests.” *The Guardian*, March 26, 2015. <https://www.theguardian.com/world/2015/mar/26/maldives-migrant-workers-protest>

society. These leaders have realised that the murder of journalists is no longer necessary; the new policy is to destroy journalism itself. This is achieved through a quiet strategy that avoids drawing international attention; the introduction of regressive policies; the destruction of credibility of the news, by flooding social media with misinformation and by limiting foreign funding for rights-based programs. The proposed Media Council Bill, the Information Technology Bill and the Mass Communications Bill of the Khadga Prasad Oli government in Nepal have sparked controversy and drawn criticism, for including draconian measures to control the freedom of speech. The recently revised Penal Code contains laws that are not clearly defined, which means that anyone could be arrested for anything that the government opposes.<sup>122</sup> While the arrest and intimidation of journalists is not a new phenomenon, these actions are now being extended to include the arrests of comedians, rappers and meme-creators. Last September, a journalist who was also a campaigner against corruption was attacked, allegedly by cadres of the ruling party.<sup>123</sup> There are also several recent examples of the police using force against civilians at peaceful protests such as at the Guthi Bill protest and at the ‘Save Heritage’ rally. During the President’s visit to a festival in Kathmandu,<sup>124</sup> the Nepali police detained 50 people as a ‘precautionary measure’, thus preventing

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<sup>122</sup> Nepali Times. “Nepal undermining free expression: HRW.” September 4, 2019. <https://www.nepalitimes.com/latest/nepal-undermining-free-expression-hrw/>

<sup>123</sup> The Himalayan Times. “Attack on Shahi a severe blow to freedom of expression.” September 29, 2019. <https://thehimalayantimes.com/nepal/attack-on-gyanendra-shahi-a-severe-blow-to-freedom-of-expression/>

<sup>124</sup> New Spotlight Online. “Police detained Fifty Individuals to Prevent Protest Before President Bhandary’s Visit in Basantapur.” September 13, 2019. <https://www.spotlightnepal.com/2019/09/13/police-detained-fifty-individuals-prevent-protest-during-president-bhandarys-visit-bashantapur/>

all protest, while dozens of Tibetans were taken into temporary custody prior to the Chinese leader Xi Jinping's visit to Nepal.<sup>125</sup>

## ***Pakistan***

Pakistan has three institutions dating from the time of colonial rule; the military, judiciary and bureaucracy, which have always been at odds with the free press, political parties and civil society organisations. Restrictions on the freedom of expression and association have been sharpening since Nawaz Sharif came into power in 2014. Last July, the Balochistan High Court in Pakistan de-legitimised 62 trade unions.<sup>126</sup> Hundreds of local and international NGOs have also been de-registered. These NGOs, mostly rights based and community based organisations, have been banned in the name of FATF. According to sources, the Pakistan Federal Union of Journalists was infiltrated by outsiders who were not journalists and this action was purportedly supported by the government. Thus, it could be said that Pakistan does not have an independent media at this time. High profile journalists and media people have been fired for taking anti-government positions,<sup>127</sup> while seven journalists were killed in the period between November 2018 and October 2019 alone, with

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<sup>125</sup> Radio Free Asia. "Tibetans Harassed, Detained in Nepal Ahead of Visit by China's President." October 15, 2019. <https://www.rfa.org/english/news/tibet/visit-10152019171717.html>

<sup>126</sup> Sahid, Saleem. "Registration of 62 trade unions cancelled in Balochistan" Dawn, July 19, 2019. <https://www.dawn.com/news/1494962/registration-of-62-trade-unions-cancelled-in-balochistan>

<sup>127</sup> Hasan, Saad. "Why are so many Pakistani journalists losing their jobs?" TRT World, November 30, 2018. <https://www.trtworld.com/magazine/why-are-so-many-pakistani-journalists-losing-their-jobs-22094>

at least 33 killed in the last six years.<sup>128</sup> Freedom of expression in Pakistan is further restricted by a religious majoritarianism, where Hindu and Christian minorities live in fear of the country's draconian blasphemy laws.

### **Sri Lanka**

Sri Lanka has constitutional provisions that guarantee the freedom of expression and freedom of assembly to every citizen. However, the violation of these rights by the state and non-state actors has become apparent in many cases. More so, when there are other ambiguous laws such as the law against hate speech that can be freely used by the state in order to control the freedom of expression in the country. The provisions in the ICCPR Act, the Penal Code Ordinance, the Prevention of Terrorism Act and the Police Ordinance provide ample means to prosecute cases of hate speech, although striking the right balance between the restriction of hate speech and the restriction of free speech is a complex task. For instance, Shakthika Sathkumara was remanded on 9 April on contrived charges of inciting religious hatred through a short story *Ardha* (Half) published online; while the book *'Budunge rasthiyaduwa'* (The loitering of Buddha) was subjected to censorship for 'anti – Buddhist material in August 2018.<sup>129</sup> It has also been confirmed that 19 journalists were killed in Sri Lanka from 1992 to 2019.<sup>130</sup> Sri Lankans now organise demonstrations every year

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<sup>128</sup> Dawn. "33 journalists killed in Pakistan in past six years: report." November 1, 2019. <https://www.dawn.com/news/1514131>

<sup>129</sup> Text extraction from the country presentation

<sup>130</sup> [https://cpj.org/data/killed/asia/sri-lanka/?status=Killed&motive-Confirmed%5B%5D=Confirmed&type%5B%5D=Journalist&cc\\_fips%5B%5D=CE&start\\_year=1992&end\\_year=2019&group\\_by=location](https://cpj.org/data/killed/asia/sri-lanka/?status=Killed&motive-Confirmed%5B%5D=Confirmed&type%5B%5D=Journalist&cc_fips%5B%5D=CE&start_year=1992&end_year=2019&group_by=location)

in January, as it is the month in which the greatest number of journalists was killed. Further, 13 websites were banned from 2015 onwards; Lanka E News was blocked in 2017 while the editors of government owned newspapers were forced to leave during the attempted constitutional coup of 2018.<sup>131</sup> Violations of the right to protest were also seen when police used tear gas and water cannon to disperse university students at protests in 2018.<sup>132</sup>

## **Implications of Restrictions on Affected Groups**

### ***HRDs and Civil Society***

Civil society is an important actor in a democratic state, with the power to make the state accountable. Therefore, civil society groups are increasingly being targeted by governments around the world. The controls on HRDs and civil societies are being imposed in the following ways:

- 1. Direct attacks on individuals:** HRDs and individuals are being attacked directly, in order to intimidate and silence them.
- 2. Use of repressive regulatory mechanisms:** The regulatory framework is being used very systematically by the government. For example, FATF (Financial Action Task Force) was used to shut down many of the rights-based organisations in India, as well as in Pakistan.

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<sup>131</sup> Text extraction from the country presentation

<sup>132</sup> Text extraction from the country presentation

Some governments also use unfairly high taxation laws or refuse approvals for advocacy software and rights-based projects.

3. **Direct onslaught on the normative framework:** Governments and non-state actors are now directly attacking the normative framework of civil society organisations. The characterising of rights activists as ‘Five-star activists’ or ‘Dollar grabbing activists’ by government leaders is another way to strip and alienate activists from the marginalised people they work with. It is a strategy of discrediting civil society groups within the public narrative.
4. **Cutting resources:** Access to the funding and resources needed to run even small organisations is being cut off.
5. **Contested space:** Civil society is in a deeply contested space which is also populated by anti-democratic groups. It is in direct contest particularly at local levels, with many who are opposed to progressive ideas.
6. **Systematic dismantling of institutions:** Governments are systematically dismantling institutions which were primarily established to protect civil society rights.

### *Religious Minorities*

As religious majoritarianism rises in South Asian countries, intolerance and violence against religious minorities are also on the rise. Violence is being used to re-culturalise and re-moralise citizenship. This action is not spontaneous; it is very well organised and it is mostly controlled by strategic narratives and propaganda. Certain narratives are established against these vulnerable groups through the mainstream media and social media. History has also been substituted by myths, portraying religious minorities as historical enemies, as dangerous people who are outsiders. For instance, Muslims in India are portrayed as criminals and as threats to the nation. They are often over-represented in criminal data. This has led many people to believe in these false narratives, resulting in an increase in hate crime against Muslims.

Many religious minorities in South Asia are suspected of criminal activities and are subjected to physical violence, torture, serious injuries and death.

### *Women*

Most South Asian societies are dominated by patriarchal values and women are often attacked for being 'too opinionated'. Thus, the shrinking space of freedom of expression and association has a further impact on women and other gender minorities. Women have multiple layers of restrictions when it comes to freedom of expression. It is regulated by family, society and state, and is often backed up by other intersectional identities as well, as in the case of women from minority communities. Qandeel Baloch was a social media star in Pakistan who tried to challenge the country's conservative society through her videos. She was murdered by her

own brother as an ‘honor killing’.<sup>133</sup> But these restrictions are not limited to women expressing their sexuality on social media. Women have also been targeted in the political sphere for being vocal about their political opinions. The children of women journalists and rights activists are also in danger and are being targeted. This has led to an increasing self-censorship among women who are HRDs, journalists and activists.

It is thus apparent that the controlling of the freedom of expression for women is mostly disguised as ‘protection’, resulting from the notion that women have no agency and should be protected.

### *Ethnic Minorities*

The tendency to accept majoritarianism as a form of nationalism has serious implications for people of ethnic minorities. The Pashtuns in Pakistan have been facing prejudice since 2002, when the Pakistani military launched an operation against militant groups in Waziristan. The Pashtun youth movement started in that area after the military operation. The operations resulted in the displacement of more than a million people from the area.<sup>134</sup> The Pashtuns are the largest displaced population in Pakistan and in the world. More than three years later, even after the displaced population returned, the stereotyping of Pashtuns as ‘terrorists’ continues. In January 2018, Naqeebullah Mehsud, a Pashtun-origin fashion model in Pakistan was killed in a staged police encounter with three others, based on fake allegations of attempting murder and carrying illegal

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<sup>133</sup> BBC. “Viewpoint: Qandeel Baloch was killed for making lives ‘difficult.’” September 30, 2019. <https://www.bbc.com/news/world-asia-49874994>

<sup>134</sup> Fakhar Kakakhel, and Umar Farooq. “Pakistan’s war and loss of hope for those displaced.” Al Jazeera. June 15, 2015. <https://www.aljazeera.com/indepth/features/2015/06/pakistan-war-loss-hope-displaced-150615090443950.html>

weapons.<sup>135</sup> Anyone who was Pashtun and challenged the authorities was declared to be Taliban or a terrorist. Many protesters engaged in PTM's activities have been killed or arrested and charged with terrorism. The indigenous people of the Chittagong Hills in Bangladesh are fighting similar battles of equality against the state and facing the bitter consequences. They are not recognised by the constitution and therefore are deprived of even the most basic constitutional rights. The Bangladeshi government controls the freedom of expression of indigenous people in Chittagong Hills where they are not even allowed to speak to foreigners without supervision. In Sri Lanka, Sinhala Buddhist majoritarianism has caused much ill-will towards ethnic minorities in the country.

## **Social Media implications of Protection of Human Rights**

Social media has become an alternative space for self-expression. It is a crucial tool for advocacy and movement building. It has cut through the monopoly held by the state and a few privately-owned broadcasting companies in controlling media content. In recent years, social media has proven to be extremely useful for mobilising people. Successful movements that started online include the #MeToo movement, the Pashtun Tahafyz Movement (PTM) in Pakistan and the #BackoffIndia movement against the blockade in Nepal. For this reason, governments have become increasingly wary of the internet. Censorship and the regulation of websites is evident across all South Asian countries and governments are introducing regressive cyber laws limiting the freedom of expression

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<sup>135</sup> Tanoli, ishaq. "ATC declares Naqeebullah Mehsud and others innocent, quashes case against them." Dawn, January 24, 2019. <https://www.dawn.com/news/1459522>

online. Digital technology is also making governments stronger by offering them more ways in which to control their citizens. These technologies and the internet have helped governments strengthen their surveillance systems, targeting journalists, human rights defenders and any persons holding opposing views. Therefore, it is important to devise new strategies for dealing with these issues related to human rights and the internet. A pro-bono lawyer's network for human rights defenders and digital security training in how to circumvent surveillance systems using technological tools could be essential strategies in protecting frontline human rights defenders using technology in their work.

## **State Accountability and the Right to Information**

The right to information is one of the key institutions that gives power to people to hold the state accountable. It is strongly linked with the state and its governance and should be supported by robust judiciary, legislative and executive systems. But our biggest problems lie in these very systems.

Some of the key challenges to governance and state accountability are:

Contesting sources of state legitimacy: Non-state actors and informal institutions in most South Asian countries dominate the events that happen in the country. These non-state actors wield enormous power and can contest the legitimacy of the elected government. Thus, when there are other forces at play, it becomes a challenge to hold the formal institutions of government accountable.

Lack of inclusivity in governance and politics: A lack of representation in government of persons who could be a voice for the minorities is one of the major problems in holding the state accountable. For instance, in the Maldives, out of 86 seats in parliament only four were for women. Therefore, Maldives witnesses sexism, xenophobia and bigotry in parliament but no one questions this because there is simply not enough representation of the minority groups.

Absence of the rule of law: An independent judiciary is essential in holding the state accountable, but it is something we lack in our South Asian nations. The judiciary is compromised by the process of appointment and political affiliation and the incompetency of the judicial body remain huge challenges in the RTI.

Corruption: Good governance in South Asia is constantly challenged by an acute level of corruption, since most countries in the region are placed in the bottom half of the Corruption Perception Index (CPI).<sup>136</sup> Corruption is negatively co-related with state accountability and the realisation of RTI is very challenging at the moment.

## **Identification of Strategies**

At this critical juncture when the world is witnessing autocratic tendencies and violations of human rights, it has become essential for HRDs to formulate new strategies of resistance. The following

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<sup>136</sup> The Economist. "Corruption remains rife in South Asia." February 23, 2017. <https://country.eiu.com/article.aspx?articleid=1265156110&Country=Nepal&topic=Economy>

strategies could be used as a guide for strengthening human rights movements in the region:

**Documenting, fact finding and evidence building:** Documentation and evidence building are essential in strengthening advocacy. This might be done by collaborating with local organisations. It would also help people to resonate with the larger advocacy issues, thus connecting the grassroots with national and regional level advocacy.

**Creating platforms for connecting and building alliances:** To make people understand the relevance of freedom of expression, association and participation, it is essential to facilitate platforms and engage in building alliances with different groups of people, including more women, youths and people from marginalised communities. Creating partnerships between regional human rights networks is also an important strategy.

SAHR could use its convening power and its position as an interlocutor to provide a space for convening and connecting HRDs as well as other civil society activists and stakeholders working at different levels which would help to bring in intersectional perspective into the platform and the alliances.

**Bridging the multi-generational gap:** It is imperative to bridge the gap between the older and younger generations of HRDs, to share experiences between the two, to learn about new challenges and to build strategies to pave the way forward. SAHR is therefore creating a panel of experienced HRDs which will also act as an ongoing advisory team.

**Thematic working groups of younger members:** A thematic working group for younger members will be created by SAHR, to help to bridge the multi-generational gap. The idea is based on the model adopted by APWLD.

**Identifying a focal person from each member state:** Focal persons from each South Asian country will help facilitate communication between SAHR and national level organisations. This person will help to connect local and national level issues with regional advocacy issues.

**Support from existing pro-bono legal networks:** Collaboration with a network of pro-bono lawyers to provide legal support for HRDs could be a good initiative at a regional level. Training could be provided to the existing network since the idea is to use what is available rather than to duplicate what has already been done.

**Linking grassroots advocacy to regional and international level advocacy:** It is important to make a connection between the smaller, local organisations and larger international organisations, linking the understanding of grassroots issues with regional and global agendas. International advocacy on issues focusing on extra-territorial obligations should also be considered.

**Countering narratives:** The narratives that promote populism should be addressed and changed. Populism has become so successful because people are not fully aware of its agenda and consequences. Therefore, efforts to encourage pluralism should be made through different types of media and by building partnerships with different groups.

**Use of digital technologies:** Since the political contexts of various countries differ, activities that might be permissible in one country may not be so in another. Therefore, an online portal where HRDs could write and share their situations and experiences from their own countries could be a valuable in raising voices and building support. A monthly digest or publication could help in fact-finding, while a mailing list could also help people to share information and keep pace with various issues.

**Exploring alternative means of resistance:** Apart from written forms of documentation, the use of visual arts, media or creative forms of expression should be promoted as alternative means of resistance.

**Training in digital security:** Human rights activists use the internet and technology for organisational purposes and for advocacy and movement building as well. They are amongst the most vulnerable groups targeted for surveillance by state and non-state actors. Hence, training in digital security for HRDs is an essential requirement driven by the growing challenges in the online and offline spheres.

**Dealing with non-state mechanisms:** It is important to come up with a strategy to deal with non-state actors, especially when they also exist in a private sphere. For example, in the case of women, the violation of rights could occur not only through external actors but also in a private sphere, from family members.

## Annexure 1

### **Statement- South Asian activists declare democracy emergency in the region**

Rights activists, academics and artists of South Asia have declared a democracy emergency in the region. The declaration came after a careful examination of curbs on freedom of expression and association in the region, in a regional consultation meeting. The consultation meeting took place at Kathmandu, Nepal. South Asians for Human Rights (SAHR) organised the regional consultation on 15 and 16 November 2019 attended by participants representing Afghanistan, Bangladesh, India, Maldives, Nepal, Pakistan, and Sri Lanka.

With majoritarian politics, threats by state and non-state actors, increased militarisation, digital surveillance, corporatisation of the media, travel restrictions and increased financial restrictions for civil society organisations being some of the major contributors to the shrinking spaces for expression and association, the participants noted with concern the lack of opportunities to address the countless challenges.

The participants noted the commonalities in the implications of the restriction of fundamental rights in the region. The continued crisis of democracy was declared as disproportionately impacting religious and ethnic minorities, women, sexual and gender minorities, human rights defenders and civil society actors.

The gathering also noted with concern the increasing and unfettered violation of the right to privacy through digital surveillance as well as the brazen censorship of counter-narratives for democratic reform and human rights following the emergence of social media as an intrinsic alternative platform for expression and dissent.

They condemned the extra-legal measures such as intimidation and harassment of human rights defenders, enforced disappearances, and extra-judicial killings, as well as draconian laws that restrict freedom of expression, and policies such as network shutdowns and disinformation campaigns. The importance of strengthening right to information regimes was also stressed upon.

There was special concern for the unprecedented lockdown of Jammu and Kashmir where the entire population has been cut off from the rest of the world for over a hundred days.

The participants agreed and advocated for the need for South Asians to unite in devising strategies to tackle the challenges facing the fundamental rights and democracy in the region.

On behalf of the members of South Asians for Human Rights,

**Sultana Kamal**

Chairperson

**Mohamed Latheef**

Co-chairperson

## Regional Consultation on the Restrictions on Freedom of Expression and Association

15 and 16 November 2019, Kathmandu, Nepal

### Agenda

15 November	
09:00 – 09:20	<b>Welcome and Introduction</b> <i>Sultana Kamal, Chairperson, SAHR</i>
09:20 – 10:30	<b>Overview and Discussion</b> <b>Bharat Bhushan</b> <i>Chair: Sultana Kamal</i>
10:30 – 10:45	<b>Tea Break</b>
10:45 – 13:00	<b>Country Situation</b> <i>Afghanistan: Najib Amiri</i> <i>Bangladesh: Mizanur Rahman Khan (TBC)</i> <i>India: Anuradha Bhasin</i> <i>The Maldives: Ahmed Tholal (TBC)</i> <i>Nepal: Kunda Dixit (TBC)</i> <i>Pakistan: Harris Khalique</i> <i>Sri Lanka: Deekshya Illangasinghe</i> <i>Chair: Sultana Kamal</i>
13:00 – 14:00	<b>Lunch Break</b>

14:00 – 15:30	<p><b>Implications of Restrictions on Affected Groups</b>  <i>HRDs and Civil Society: Amitabh Behar</i>  <i>Ethnic minorities: Bushra Gohar</i>  <i>Religious minorities: Vipul Kumar</i>  <i>Women: Muktasree Chakma Sathi</i></p> <p><i>Chair: Hari Sharma</i></p>
15:30 – 15:45	<b>Tea Break</b>
15:45 – 17:00	<p><b>Social Media Implications of Protection of Human Rights</b>  <i>Usama Khilji</i>  <i>Shafeea Zubair</i></p> <p><i>Chair: Deekshya Illangasinghe</i></p>
18:00 onwards	<p><b>Release of SAHR Publication on the Status of Regional Cooperation in South Asia: A Critical Assessment of the SAARC</b></p> <p>Followed by a Reception</p>
16 November	
09:00 – 10:00	<p><b>State Accountability and Right to Information</b>  <i>Ahmed Tholal</i>  <i>Mahfuz Anam (TBC)</i></p> <p><i>Chair: Anuradha Bhasin</i></p>

10:00 – 10:45	<p><b>A personal journey: How to respond to restrictions on Freedom of Expression?</b></p> <p><i>Dr. Shahidul Alam</i></p>
10:45 – 11:00	<p><b>Tea Break</b></p>
11:00 – 12:00	<p><b>Working Groups on Vulnerable Communities Social Media State Accountability</b></p> <p><i>Chair: Roshmi Goswami</i></p>
12:00 – 13:00	<p><b>Presentations of Group Reports</b></p> <p><i>Chair: Roshmi Goswami</i></p>
13:00– 14:00	<p><b>Lunch Break</b></p>
14:00 – 15:00	<p><b>Identification of Strategies and Summing up</b></p> <p><i>Chair: Roshmi Goswami</i></p>
15:00 – 15: 30	<p><b>Tea Break</b></p>
15:30 onwards	<p><b>Screening of Film on Kashmir “Darbar –e – Watan (In the court of my people)” and Discussion</b></p> <p><i>Modarator: Uma Chakravarti</i></p>





SAHR is a democratic regional network with a large membership base of people committed to addressing human rights issues at both national and regional levels. SAHR seeks to contribute to the realisation of South Asian peoples' right to participatory democracy, good governance and justice by strengthening regional response, including regional instruments, monitoring human rights violations, reviewing laws, policies and practices that have an adverse impact on human rights and conducting campaigns and programmes on issues of major concern in the region.

SAHR comprises both institutional and individual members. An elected bureau works as the organisation's executive body while the membership committee oversees enrolment of members. The SAHR Chairperson and Co-Chairperson are Ms Sultana Kamal of Bangladesh and Mr. Mohamed Latheef of the Maldives respectively. The Secretariat is located in Colombo, Sri Lanka.



## **South Asians for Human Rights (SAHR)**

345/18 Kuruppu Road,

(17/7 Kuruppu Lane) Colombo 08, Sri Lanka

Telephone/Fax: +94 11 2695 910

Email: [sahr@southasianrights.org](mailto:sahr@southasianrights.org)

Website: [www.southasianrights.org](http://www.southasianrights.org)