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INDIA: ARRESTS, RAIDS TARGET CRITICS OF GOVERNMENT

COUNTERTERRORISM LAW MISUSED TO HARASS JOURNALISTS, ACTIVISTS

Indian authorities are misusing an abusive counterterrorism law, financial regulations, and other laws to silence journalists, human rights defenders, activists, and critics of the government, 12 international human rights groups said today.

On October 3, 2023, police in New Delhi arrested the editor and an employee of the news portal NewsClick, and raided the homes of 46 journalists seemingly connected to the digital news platform over allegations of illegal foreign funding, which the outlet has denied.¹ Soon after the writer Arundhati Roy spoke out at a protest meeting that followed the raids, authorities said they would prosecute her and a Kashmiri academic for allegedly “promoting enmity between different groups,” “causing disharmony,” and “public mischief,” for a speech she had made 13 years ago, in 2010.² A case was also registered under the counterterrorism law, Unlawful Activities Prevention Act (UAPA), against them.³

The groups are Amnesty International, Asian Forum for Human Rights and Development (FORUM-ASIA), Christian Solidarity Worldwide (CSW), Committee to Protect Journalists, Front Line Defenders, Human Rights Watch, International Federation of Journalists (IFJ), International Service for Human Rights, PEN America, Reporters Without Borders, International Federation for Human Rights (FIDH), and World Organisation Against Torture (OMCT) in the framework of the Observatory.

The arrest and raids at NewsClick, an outlet known to criticize the Bharatiya Janata Party (BJP)-led government for failing to uphold human rights, are the latest attempts by authorities to harass and intimidate independent journalists, the groups said. The authorities sealed NewsClick’s Delhi office and seized several journalists’ electronic devices, including laptops and phones without ensuring the integrity of their data, essential to ensuring due process.⁴

Since the BJP government, led by Prime Minister Narendra Modi, came to power in 2014, Indian authorities have carried out an escalating crackdown on the media and civil society. They have arrested journalists on spurious terrorism and other criminal charges and have routinely targeted critics and independent news organizations with allegations of financial irregularities.⁵ Similarly, they have used the counterterrorism law, national security laws, foreign funding laws, and income tax regulations to target and prosecute human rights defenders and peaceful protesters. Journalists and activists from minority groups are particularly at risk, the groups said.⁶

During the latest raids, the authorities also searched the Mumbai home of a prominent human rights activist, Teesta Setalvad, in apparent retaliation for writing NewsClick articles criticizing the government.⁷ The government has repeatedly targeted Setalvad and jailed her on politically motivated charges of criminal conspiracy and forgery while she was pursuing

¹ Amnesty International, *India: Authorities Should Stop Targeting, Prosecuting Journalists and Online Critics* (Media Quote, 3 May 2022), <https://www.amnesty.org/en/latest/news/2022/05/india-authorities-should-stop-targeting-prosecuting-journalists-and-online-critics/>; “Statement by NewsClick on Oct 3 Raids by Special Cell of Delhi Police”, *NewsClick*, 4 October 2023, <https://www.newsclick.in/statement-newsclick-oct-3-raids-special-cell-delhi-police>

² Vijay Parshad, “Why Is the Indian State Reigniting a 13-Year-Old Case Against Arundhati Roy?”, *The Wire*, 11 October 2023, <https://thewire.in/rights/why-is-the-indian-state-reigniting-a-13-year-old-case-against-arundhati-roy>

³ “Delhi L-G nod for prosecution of Arundhati Roy in 2010 speech case”, *Indian Express*, 11 October 2023, <https://indianexpress.com/article/india/delhi-lg-approves-prosecution-of-arundhati-roy-kashmir-professor-in-2010-provocative-speeches-case-8976605/>

⁴ DigiPub, “Letter from the media to D.Y. Chandrachud, Chief Justice of India, on the Delhi police raids at the homes of journalists and seizure of devices”, X, 4 October 2023, <https://twitter.com/DigipubIndia/status/1709523526443847728>

⁵ Amnesty International, “*India: Authorities Should Stop Targeting, Prosecuting Journalists and Online Critics*”, (Press Release, 3 May 2022), <https://www.amnesty.org/en/latest/news/2022/05/india-authorities-should-stop-targeting-prosecuting-journalists-and-online-critics/>

⁶ Amnesty International, “India: Authorities must stop weaponizing central agencies to clamp down on civil society”, (Media Quote, 8 September 2022), <https://www.amnesty.org/en/latest/news/2022/09/india-authorities-must-stop-weaponizing-central-agencies-to-clamp-down-on-civil-society/>

⁷ Zoya Mateen, “NewsClick: India police arrest journalists over China funding claims”, *BBC News*, 3 October, <https://www.bbc.co.uk/news/world-asia-india-66909370>

accountability for the 2002 anti-Muslim violence in Gujarat state.⁸

Regardless of the veracity of the allegations of foreign funding, raiding a media outlet and arresting its journalists on terrorism charges is a grossly disproportionate measure, the groups said.

In September 2021, tax and financial regulators raided journalists' homes and offices of news websites NewsLaundry and NewsClick, an actor's premises, and the home and office of the human rights activist Harsh Mander.⁹

In February 2023, Indian tax officials raided the BBC offices in New Delhi and Mumbai in an apparent reprisal for a two-part documentary that highlighted Modi's record in failing to protect Muslims.¹⁰ The government blocked the BBC documentary in India in January, using emergency powers under the Information Technology Rules.¹¹

The government is increasingly using the counterterrorism law, Unlawful Activities Prevention Act (UAPA), to target its critics.¹² In a recent briefing, Amnesty International found that the Indian government has exploited the 2010 and 2013 Mutual Evaluation Reports of Financial Action Task Force which is due to visit India in November 2023 for its fourth evaluation to tighten its arsenal of counter-terrorism laws including the abusive Unlawful Activities (Prevention) Act (UAPA).¹³ The law defines terrorism in a vague and overbroad manner, reverses the presumption of innocence, allows for prolonged detention without trial or charge for up to 180 days, including up to 30 days in police custody, and creates a strong presumption against bail.¹⁴

In November 2021, the authorities arrested a prominent Kashmiri human rights activist, Khurram Parvez, under the UAPA.¹⁵ On March 22, 2023, the authorities added another case of financing terrorism under UAPA against Parvez,¹⁶ while Irfan Mehraj, a journalist formerly associated with Parvez's human rights organization, was arrested in the same case.¹⁷

The Kashmir Walla editor Fahad Shah and a reporter, Sajad Gul, have been detained since early 2022.¹⁸ After being granted bail in separate cases, both were rearrested – without being released – under the Jammu and Kashmir Public Safety Act (PSA), a draconian preventive detention law that allows for up to two years in custody without trial. While the Jammu and Kashmir High Court quashed the PSA order against Shah, he remains jailed while facing trial in a separate UAPA case in relation to a 2011 article on his website, whose author, contributor Abdul Aala Fazili, has been detained since April 2022.¹⁹ Similarly, another Kashmiri journalist, Aasif Sultan, detained since August 2018, was granted bail in a

⁸ Amnesty International, "Detention of prominent human rights activist Teesta Setalvad by the Indian authorities is a direct reprisal against those who dare to question their human rights record", X, 25 June 2022, <https://twitter.com/AllIndia/status/1540701002772250625>

⁹ Human Rights Watch, *India: Government Raids Targeting Critics: Stop Harassment of Activists, Journalists, Peaceful Protesters* 17 September 2021, <https://www.hrw.org/news/2021/09/17/india-government-raids-targeting-critics>

¹⁰ Amnesty International, "India: Tax raids on the BBC are an 'affront to free speech'", (Media Quote, 14 February 2023), <https://www.amnesty.org/en/latest/news/2023/02/india-tax-raids-on-the-bbc-are-an-affront-to-free-speech/>

¹¹ Amnesty International, "India: Tax raids on the BBC are an 'affront to free speech'", (Media Quote, 14 February 2023), <https://www.amnesty.org/en/latest/news/2023/02/india-tax-raids-on-the-bbc-are-an-affront-to-free-speech/>

¹² Amnesty International, *Weaponizing Counterterrorism: India's exploitation of terrorism financing assessments to target the civil society* (Index: ASA 20/7222/2023), <https://www.amnesty.org/en/documents/asa20/7222/2023/en/>

¹³ Amnesty International, "India: Government weaponizing terrorism financing watchdog recommendations against civil society", 27 September 2023, <https://www.amnesty.org/en/latest/news/2023/09/india-government-weaponizing-terrorism-financing-watchdog-recommendations-against-civil-society/>

¹⁴ Amnesty International India, "Injustice In The Courts: Four Indian Laws That Should Have Never Existed", 6 May 2020, <https://web.archive.org/web/20201003053044/https://amnesty.org.in/injustice-in-the-courts-four-indian-laws-that-should-have-never-existed/>

¹⁵ Amnesty International India, "India: Human rights defender Khurram Parvez marks 150 days arbitrarily detained on baseless charges", 25 April 2022, <https://www.amnesty.org/en/latest/news/2022/04/india-human-rights-defender-khurram-parvez-marks-150-days-arbitrarily-detained-on-baseless-charges/>

¹⁶ "NIA arrests rights activist Khurram Parvez in NGO terror-funding case", *Hindustan Times*, 23 March 2023, <https://www.hindustantimes.com/cities/chandigarh-news/nia-arrests-rights-activist-khurram-parvez-in-ngo-terror-funding-case-101679514397310.html>

¹⁷ Amnesty International, "India: Authorities must immediately release Kashmiri journalist Irfan Mehraj", (Media quote, 21 March, 2023), <https://www.amnesty.org/en/latest/news/2023/03/india-authorities-must-immediately-release-kashmiri-journalist-irfan-mehraj/>

¹⁸ Amnesty International, "India: The Government Must End the Repression of Rights In Jammu And Kashmir", 2 September 2022, <https://www.amnesty.org/en/latest/news/2022/09/india-the-government-must-end-the-repression-of-rights-in-jammu-and-kashmir/>

¹⁹ Mubashir Naik, Betwa Sharma, "500 Days: Kashmiri Journalist Fahad Shah's Incarceration Is An Exercise In Assumptions & Retribution", *Article 14*, 19 June 2023, <https://article-14.com/post/500-days-kashmiri-journalist-fahad-shah-s-incarceration-is-an-exercise-in-assumptions-retribution-648fbd385207e>; Srishti Jaiswal, "Monitor reporter's trial opens: Why India treats journalists as terrorists", *The Christian Science Monitor*, 19

UAPA case in April 2022, but rearrested under the PSA five days later.²⁰

The Indian government also used UAPA to arrest 16 prominent activists who promoted the rights of India's most marginalized communities, accusing them of inciting violence that occurred during a Dalit meeting in January 2018.²¹ Eight are still detained without trial, and seven eventually were granted bail, while one died in custody. According to reports by the US-based forensic firm Arsenal Consulting, malware was used to surveil and plant evidence on the computers of two accused in this case, amplifying concerns surrounding the seizure of the NewsClick journalists' devices without due process.²² Amnesty International and the Citizen Lab also uncovered a coordinated spyware campaign targeting at least nine human rights defenders (HRDs) in India, eight of whom had been calling for the release of the 16 activists.²³

The Delhi police filed politically motivated charges of sedition and terrorism against 18 activists, students, opposition politicians, and residents in relation to the communal violence in Delhi in February 2020.²⁴ Several of those arrested were involved in organizing peaceful protests against the Citizenship (Amendment) Act.²⁵ The Delhi High Court, while granting bail in June 2021 to three activists booked under UAPA, stated that "in its anxiety to suppress dissent, in the mind of the State, the line between the constitutionally guaranteed right to protest and terrorist activity seems to be getting somewhat blurred."²⁶

An analysis of the latest crime data by Amnesty International found that despite the increased use of UAPA, there have been very few convictions.²⁷ Only 2.2 percent of cases registered under the law from 2016 to 2019 ended in a court conviction. Nearly 11 percent of cases were closed by the police for lack of evidence, while the rest remained pending. The delay in filing charges and several acquittals in these cases show that the counterterrorism law is used to keep critics locked up for years, and send a chilling message to others who speak out, making the judicial process itself a tool for persecution and punishment.

United Nations human rights experts have repeatedly condemned the use of UAPA to target journalists, human rights defenders, and other critics.²⁸

The Indian authorities should immediately and unconditionally release all journalists, human rights defenders, activists, and critics arrested in politically motivated cases, drop all charges against them, and stop threatening, harassing, and intimidating them, including through criminal prosecutions, the groups said. The government should also amend the Unlawful Activities Prevention Act to bring it in line with international human rights standards and, pending its amendment, the government should stop using it to target critics.

April 2023, <https://www.csmonitor.com/World/Asia-South-Central/2023/0419/Monitor-reporter-s-trial-opens-Why-India-treats-journalists-as-terrorists>; "Indian authorities raid The Kashmir Walla, arrest contributor over 2011 article", *Committee to Protect Journalists*, 19 April 2022, <https://cpj.org/2022/04/indian-authorities-raid-the-kashmir-walla-arrest-contributor-over-2011-article/>

²⁰ "Aasif Sultan: Kashmir Narrator | Imprisoned in India | August 27, 2018", *Committee to Protect Journalists*, <https://cpj.org/data/people/aasif-sultan/>

²¹ Amnesty International, "Act now to demand the release of the BK16!", <https://www.amnesty.org/en/latest/campaigns/2022/12/act-now-to-demand-the-release-of-the-bk16/>

²² Arsenal Consulting, *IN THE COURT OF SPECIAL JUDGE NIA, MUMBAI SPECIAL CASE NO. 414/2020, National Investigating Agency v. Sudhir Pralhad Dhawale & others, Report III*, 21 June 2021, <https://context-cdn.washingtonpost.com/notes/prod/default/documents/e2ccf42f-91de-40d2-856b-fd5b249ed1e7/note/fdb246b4-cef6-47ef-97bc-84d0dfbe85c6>.

²³ Amnesty International, "India: Human Rights Defenders Targeted by a Coordinated Spyware Operation", 15 June 2020, <https://www.amnesty.org/en/latest/research/2020/06/india-human-rights-defenders-targeted-by-a-coordinated-spyware-operation/>

²⁴ Amnesty International, "Government Of India Must Stop Using Draconian Laws Against Dissenting Voices", (Press Release, 22 April 2020), <https://web.archive.org/web/20201003112023/https://amnesty.org.in/news-update/government-of-india-must-stop-using-draconian-laws-against-dissenting-voices/>

²⁵ Human Rights Watch, *India: Biased Investigations 2 Years After Delhi Riot*, 21 February 2022, <https://www.hrw.org/news/2022/02/21/india-biased-investigations-2-years-after-delhi-riot>

²⁶ "'Right To Protest Not 'Terrorist Act' Under UAPA' : Delhi High Court Finds No Prima Facie Case Against Asif Iqbal Tanha, Natasha Narwal & Devangana Kalita", *Live Law*, 15 June 2021, <https://www.livelaw.in/top-stories/right-to-protest-not-terrorist-act-uapa-delhi-high-court-asif-iqbal-tanha-natasha-narwal-devangana-kalita-175736>

<https://www.livelaw.in/top-stories/right-to-protest-not-terrorist-act-uapa-delhi-high-court-asif-iqbal-tanha-natasha-narwal-devangana-kalita-175736>

²⁷ Amnesty International, *Weaponizing Counterterrorism: India's exploitation of terrorism financing assessments to target the civil society* (Index: ASA 20/7222/2023), <https://www.amnesty.org/en/documents/asa20/7222/2023/en/>

²⁸ OHCHR, *India: UN expert demands immediate end to crackdown on Kashmiri human rights defenders*, 24 March 2023, <https://www.ohchr.org/en/press-releases/2023/03/india-un-expert-demands-immediate-end-crackdown-kashmiri-human-rights>

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