

SUBMISSION TO THE SPECIAL RAPPORTEUR ON THE INDEPENDENCE OF JUDGES AND LAWYERS
REGARDING THE SR'S FORTHCOMING REPORT TO THE HUMAN RIGHTS COUNCIL (2022) ON
PROTECTION OF LAWYERS FROM UNDUE INTERFERENCES LAWYERS MAY FACE IN THE FREE AND
INDEPENDENT EXERCISE OF THE LEGAL PROFESSION

2. What entities and/or mechanisms are in place to prevent and/or punish interferences with the free and independent exercise of the legal profession? Please briefly describe them and specify whether they are independent bodies or if they belong to the administrative structure of the State.

4. Please describe the role of the national bar association(s) in protecting lawyers and the free exercise of the legal profession. Is the bar association de jure and de facto independent from the State?

The primary institution, which mandates the welfare of lawyers and advocates in India on a national level is the Bar Council of India (BCI)¹. The BCI has a large role to play when it comes to the protection of rights of lawyers in India. Being the sole statutory body on a Central level, the BCI is tasked with several functions, which include laying down standards of professional conduct and etiquette for advocates². The Advocates Act, 1961, the legislation which constitutes the BCI also provides explicitly that the functions of the BCI include, inter alia, safeguarding the rights, privileges and interests of advocates,³ and includes providing financial assistance to lawyers.⁴

With regard to the free practice of the legal profession in India, while the BCI lacks any explicit power to work in this regard, there are certain functions of the BCI, which aim at achieving the same. These would include promoting legal education,⁵ organizing legal aid to the poor,⁶ and promoting legal reform.⁷

When it comes to the matter of independence from the State, the BCI is a statutory body given life by the Advocates Act, 1961. Being so, it cannot be termed as *de jure* independent from the State as the Legislature has significant influence over how the BCI will function. There do exist several Bar Associations on a National,⁸ State⁹ and District¹⁰ level, which also functions with the objective of welfare of advocates. These Bar Associations are private bodies and are governed by their own rules and regulations, but lack the powers and capabilities of the BCI and State Bar Councils regarding welfare of lawyers. While the decisions and actions of Bar Associations are not subject to scrutiny of bar councils generally, however, if these actions are violative of the Rules of Professional Conduct, the respective State Bar or the Bar Council of India can take action against such lawyers.

¹ Section 4, Advocates Act, 1961

² Section 7(1)(b), Advocates Act, 1961

³ Section 7(1) (d), Advocates Act, 1961

⁴ Section 7(2)(a), Advocates Act, 1961

⁵ Section 7(1) (h), Advocates Act, 1961

⁶ Section 7(1) (ib), Advocates Act, 1961

⁷ Section 7(1)(e), Advocates Act, 1961

⁸ Bar Association of India, Aims and Objectives of the Bar Association of India, (http://baoi.50webs.com/Bar_Association_of_India/Aims_%26_Objectives.html), accessed on 3rd Dec., 12:45am

⁹ Delhi Bar Association, About DHCBA, (<https://www.dhcba.org/about-dhcba/>), accessed on 3rd Dec., 12:44am

¹⁰ New Delhi Bar Association, About Us, (<http://www.newdelhibarassociation.com/about.html>) accessed on 3rd Dec., 12:47am

The functioning of the BCI is largely aided by the State Bar Councils, which work in unison to help achieve the objectives of the BCI. An instance of the same was when a few State Bar Councils had provided financial support to lawyers whose earnings were impacted due to online functioning of courts.¹¹

All lawyers enrolled with any State Bar Council, are bound by the Rules of Professional Conduct.¹² Bar Councils as well as State Bar Councils also have the function to safeguard the interests of advocates on its roll. This includes the right of lawyers to freely represent individuals, as the right to legal aid is a constitutionally guaranteed right of a detainee or an accused.¹³

In the recent past, there have been several instances of denial of legal representation to individuals. Some of these illegal decisions have been taken by district bar associations themselves, and subsequently challenged legally.

In December 2019, a District Bar Association in the State of Telangana passed a resolution¹⁴ to not provide legal aid to the accused in a rape and murder case in Hyderabad city.¹⁵ In January 2020, another District Bar Association in the State of Karnataka passed a similar resolution for a woman holding a 'Free Kashmir' placard during an anti-CAA protest.¹⁶ Similarly, in February 2020, another District Bar Association in Karnataka passed a resolution to not represent three Kashmiri students, who were booked for sedition for raising pro-Pakistan slogans in a video.

A college student, who was also booked for sedition for raising pro-Pakistan slogans during an anti-CAA protest, also had a difficult time finding a lawyer, wherein the lawyers who wanted to represent her, were not allowed to do so due to intimidation from local advocate groups in Bangalore, Karnataka.¹⁷

Several independent groups have also been established, which have been organising lawyers against intimidating tactics to defer them from carrying out their professional duties.¹⁸ Some of these associations and its members have also been criminalised for the same. Indian Association of People's Lawyers (IAPL), which is the Indian Chapter of International Association of People's Lawyers, was named as a front organisation of a banned group by the investigating agency in the Bhima Koregaon case. The group was active in taking up cases of people belonging to marginalised groups as well as raising voice against intimidation of lawyers. At least three individuals who have been arrested in the case were members of IAPL.

¹¹ Bar and Bench, [COVID-19] Allahabad HC directs BCI to release funds; directs Bar Council of UP to frame a scheme to disburse assistance in the meantime, (<https://www.barandbench.com/news/allahabad-hc-directs-bci-to-release-funds-directs-bar-council-of-up-to-frame-a-scheme-to-disburse-assistance-in-the-meantime>, accessed on 4th Dec. 2021).

¹² <http://www.barcouncilofindia.org/about/professional-standards/rules-on-professional-standards/>

¹³ Article 22(1) of Constitution of India provides that a person who is arrested shall not be denied the right to consult or be defended by a practitioner of their choice.

¹⁴Hyderabad rape and murder case: Bar Association not to represent 4 accused, (<https://www.theweek.in/news/india/2019/12/01/hyderabad-rape-murder-case-bar-association-not-to-represent-4-accused.html>, accessed 3th Dec 2021).

¹⁵Woman doctor's charred remains found near Hyderabad, (https://www.theweek.in/news/india/2019/11/29/woman-doctor-charred-remains-found-near-hyderabad.html#!#col_leftparaside_articletopheader, accessed 4th Dec 2021)

¹⁶ Won't represent woman who raised 'Free Kashmir' placard at protest against JNU violence, says Mysuru Bar Association, (<https://www.firstpost.com/sports/wont-represent-woman-who-raised-free-kashmir-placard-at-protest-against-jnu-violence-says-mysuru-bar-association-7910931.html>, accessed 4th Dec 2021).

¹⁷Four students booked in sedition cases struggle to get lawyers, (<https://indianexpress.com/article/india/four-students-booked-in-sedition-cases-struggle-to-get-lawyers-6288518/>, accessed 4th Dec 2021)

¹⁸ These include Delhi High Court Women Lawyers Forum, Women in Criminal Law Association, All India Lawyers Association For Justice (AILAJ), etc.

5. Please provide detailed information on the number of lawyers that have been subject to criminal, administrative or disciplinary proceedings in the last five years for alleged violations of standards of professional conduct. How many of them were found guilty? How many of them were ultimately disbarred?
6. Please provide information on any case where lawyers in your country have been subject to intimidation, hindrance, harassment or improper interference, whether from State authorities or non-State actors, for action taken in accordance with their recognized professional duties. Please also describe the measures that State authorities have taken to investigate and bring perpetrators to justice.

The information provided under this section is not exhaustive, and is limited to reports available in the public domain.

Killing of Lawyers

- On 12.06.2019, 38-year old Darvesh Yadav, the first woman president of the Agra Bar Council, was shot dead inside her chamber in Agra court.
- On 19.07.2019, a 31-year old lawyer, Naveen Yadav was brutally thrashed by a few residents of Udaka village in Nuh District of Haryana, while he was returning from the police station, where he had gone to help two families reach a legal compromise. He was attacked with bricks and cricket bats. Another lawyer who tried to save him was also attacked.
- On 25.09.2020, Devji Maheswari, a lawyer from Dalit community, who was also an activist, was murdered in his office in Rapar, Kutch District, Gujarat. The accused identified as a member of the dominant caste identity group killed him because of his Facebook posts that criticized Brahmanism.
- On 17.02.2021, High Court Advocate couple and social activists, Gattu Vaman Rao and Gattu Nagamani were murdered, while they were travelling by car to Hyderabad from Manthani, in Peddapalli district of Telangana. They had gone to Manthani to file a petition against a local politician over a temple land dispute.

Physical attack on Lawyers

- On 18.07.2021, Advocate Satyadev Joshi and another lawyer in Mumbai were attacked by a mob with swords, iron rods and sticks. They were on their way to meet their clients, who had filed a case about a dispute over the ownership rights of a land.
- On 05.09.2021, Advocate Akshat Sehgal of Jabalpur, Madhya Pradesh sustained head injury, after being attacked by a group of persons over a dispute. Following that, the lawyers in Jabalpur abstained from court proceedings, including virtual and physical hearings, in the High Court and District Court to protest the assault.
- Bangalore-based Advocate Maitreyi Krishnan along with two other advocates¹⁹ were heckled and their vehicle attacked, when they reached the Dharwad District Court to represent the three Kashmiri students who were booked for sedition.

Lawyers Charged Under Extraordinary Laws

¹⁹ Names are withheld for protection.

- On 25.12.2016, Surendra Gadling, a human rights lawyer and General Secretary of the Indian Association of Peoples' Lawyers (IAPL), was arrested in the Surajgarh Mine Arson case. On 06.06.2018, he was again arrested in the Bhima Koregaon case under Unlawful Activities (Prevention) Act, 1967 (UAPA) amongst other serious offences, for which he has been in pre-trial detention for over three years. Additionally, forensic analysis has revealed that the computer of Advocate Gadling was hacked into for planting fabricated evidence.
- On 08.01.2017, Tamil Nadu police arrested lawyer A. Murugan for allegedly instigating two women towards Maoist ideology, and arranging to shelter them. He was charged under UAPA and also for criminal conspiracy under the Indian Penal Code (IPC). He is a lawyer and civil rights activist, who had been representing political prisoners in Tamil Nadu, including those implicated for being alleged Maoists.
- On 20.02.2018, Upendra Nayak was arrested by the Paralakhemundi police and booked in ten different cases for serious offences such as sedition, waging war against the State, as well as under UAPA, wherein he himself was the advocate defending the accused. He was released on 23.03.2018. Nayak is an advocate who has been appearing for adivasi people falsely implicated in cases by the police in the Gajapati district of Odisha.
- Sudha Bharadwaj, a human rights lawyer and activist, was arrested in the Bhima Koregaon case on 28.08.2018 under UAPA for allegedly having links with the banned CPI (Maoist) organisation. She had been in pre-trial detention since then, until very recently, default bail was granted to her by the Bombay High Court. The NIA has filed an appeal against the bail in the Apex Court.
- On 28.08.2018, a human rights lawyer and activist, Arun Ferreira was arrested in the Bhima Koregaon case, for allegedly triggering violence at Bhima Koregaon on January 1, 2018, and for their alleged links with the banned CPI (Maoist) organization. Few months before his arrest, he was instrumental in probing the encounter killings of 40 alleged Maoists by police in Gadchiroli district, Maharashtra.
- On 29.10.2021 and 30.10.2021, Advocates Mukesh Kumar and Ansarul Haq Ansar were part of the fact-finding committee that visited Tripura to document the nature and scale of violence that unfolded on Muslim community. Their report titled, "Humanity under attack in Tripura; #Muslim lives matter", documented the vandalisation of mosques, shops and houses owned by Muslims. Both of them were charged under UAPA, and several provisions of IPC.

Intimidation / Raid / Detention

- Human rights lawyers of the Jagdalpur Legal Aid Group (JagLAG) in Bastar, Chhattisgarh, were targets of the State Government in 2016, through issuing threats and other legal manoeuvres.
- S.Vanchinathan, a lawyer who was present on the spot to provide legal assistance during anti-Sterlite protests, was arrested on 22.05.2018. He was charged for offences pertaining to rioting, and spent 16 days in custody. Another lawyer, K. Hariragavan, who was also providing legal aid to the protesters, was also booked for the same offences.
- Since January 2019, Advocate Harmanjeet Singh Sethi, who has been dealing with a lot of sensitive cases in Chandigarh, Punjab including that of politicians, has been threatened twice over phone. He was threatened with arrest, and was asked to leave the cases he was pursuing.
- On 11.07.2019 in Delhi and Mumbai, Central Bureau of Investigation (CBI) raids were simultaneously conducted in the office of Non-Governmental Organization (NGO) Lawyers

Collective, and homes of its founding members, Advocates Indira Jaising and Anand Grover. Lawyers Collective is a group of lawyers who engage in works of providing legal aid, doing human rights advocacy and litigation, especially in the interest of marginalized communities. Subsequently, the Foreign Contribution Regulation Act (FCRA) license of the NGO was suspended for alleged irregularities in foreign funds.

- On 28.07.2019, the Lawyer²⁰ representing a rape survivor in Unnao, Uttar Pradesh (UP) was attacked on the way to court along with his client, in Rae Bareilly district, UP. Both of them suffered critical injuries. He wrote to the District Magistrate in Unnao, detailing the repeated threats to his life and his family's safety. Furthermore, Additional District Judge Prahlad Tandon, who was presiding over the Unnao case, was abused, threatened, and physically attacked on multiple occasions.
- In the context of the Bhima Koregaon case, the National Investigation Agency (NIA) issued summons to three Advocates - Nihalsing Rathod, Viplav Teltumbde, and another Nagpur-based lawyer - on 28.08.2020. Advocate Nihalsing has represented several accused in the same case. His name has also been added to the Union War Book suspect list, which is a highly confidential document listing enemies or potential enemies of the State. Viplav Teltumbde has been frequently a target of investigation agencies.²¹
- On 24.12.2020, the office of Advocate Mehmood Pracha was raided by the Special Cell, Delhi Police. He has been involved in representing several Muslims accused in the 2020 North East Delhi violence. Lawyers and legal experts called this State action to be an attack on client-lawyer privilege. His office was raided again in March 2021
- On 08.07.2021, in Bangalore, Karnataka, Advocate Shishira Rudarappa was threatened by Uttar Pradesh government's Director of Information and Public Relations for tweeting and criticizing an image of Yogi Adityanath's election campaign in Karnataka. Additionally, he was threatened with legal action on Twitter by the Uttar Pradesh cyber police..
- Lawyers in Delhi went on a one-day strike on 25.09.2021, over a shootout that took place during a case hearing in a District Court, New Delhi. On the day of the protest, the lawyers claimed that the police did an open firing, and two of them suffered gunshot injuries.
- Delhi-based Advocates Nikita Jacob, Shantanu Muluk were booked under charges of sedition along with activist Disha Ravi, in the toolkit case related to farmer's movement. Delhi Patiala Court granted them anticipatory bail on the matter, and gave them protection from arrest.

Lawyers Targeted Using Israeli Spyware Pegasus

- In Mohali, Punjab, Advocate Jagdeep Singh Randhawa's phone was compromised by the use of Pegasus software in mid-2019. He has been involved in several cases of forced disappearances in Operation Blue Star. Another advocate who represents UAPA accused in Punjab, and is associated with several human rights collectives across Punjab, Advocate Jaspal Singh Manjhpur's devices were also potentially snooped by Pegasus software, the confirmation process of which is underway.
- Advocates Sudha Bharadwaj and Surendra Gadling, jailed on terrorism charges in the Bhima Koregaon case, were targets of the Israeli spyware Pegasus. In connection with the same case,

²⁰ The Lawyer's name has not been mentioned for protection.

²¹ Viplav Teltumbde's implication is suspected to be owing to his connection with Milind Teltumbde (who is his uncle and a Maoist leader who was recently killed in an alleged encounter in Gadchiroli, Maharashtra), and with Prof. Anand Teltumbde, who is currently in pre-trial detention in the Bhima Koregaon case. Viplav was arrested earlier in 2004 while he was a final-year law student in Yavatmal, Maharashtra. He was accused of involvement in the Naxal movement and booked in five separate cases, all of which led to acquittal in a span of three years.

the names of Maharashtra-based lawyers, Nihalsing Rathod and Jagdish Meshram, and Shalini Gera, a human rights lawyer who was with JagLAG, Chhattisgarh, appeared on the surveillance list.

Lawyers Targeted During Anti-CAA Protests

After the passing of the Citizenship Amendment Act (CAA), 2019, multiple protests were carried out by citizens in the country. Police officials of several states carried out the use of unreasonable force and excesses against peaceful protesters. Intimidation of lawyers, who were representing those who were killed, or injured by police firing, was carried out by State police officials and non-State actors (vigilante groups belonging to the dominant community).

- In Uttar Pradesh's Bijnore, Advocates Afzal Usmani and Ahmed Zakawat, representing a Muslim youth killed by the police, have faced repeated threats by the police. Their families have also been threatened, because they sought to file an FIR against police officials. The Bijnore police had also filed an FIR against Advocate Javed Aftab and placed a reward of Rs 25,000 for anyone who found him.
- In Lucknow, Senior Advocate Mohammed Shoaib was put under house arrest and illegally detained at 2 am on 20.12.2019. He was kept in illegal police detention for over a month, and the police did not name him under any FIR.
- The Uttar Pradesh Police also arrested Advocate Mohammed Faizal,²² who had gone to Shamli district to provide legal assistance to Muslims who were arrested during the protests against the Citizenship Amendment Act in December 2019. He was booked for offences such as promoting religious enmity.
- 2020 North East Delhi Violence survivor and accused Shahrukh Pathan's lawyer Advocate Khalid Akhter has been intimidated and threatened by lawyers and non-State actors and asked several times to drop the case. Additionally, he was also threatened by the prosecutor on the case for cancellation of his license.
- Senior Advocate Prashant Bhushan, involved in numerous human rights cases, was booked for criminal contempt of court over a tweet, which criticised the then Chief Justice of India, S.A Bobde, and also criticised the Supreme Court for 'destroying democracy in the last couple of years.' The Supreme Court held him guilty of contempt of court, and let him off with a penalty of Rupee 1 failing which he would be sentenced to jail for three months and barred from his legal practice for a period of three years. Additionally, in May 2020, an FIR was lodged against him by an Armed forces personnel in Gujarat, for allegedly hurting Hindu sentiments as he tweeted criticizing the move by the Central Government to telecast Ramayana and Mahabharata during the Covid-19 lockdown in the country. He was granted interim protection on the same by the Supreme Court.

Lawyers' Arrests and Detention in Kashmir²³

²² UP Police Arrest Muslim Lawyer Offering Legal Aid to Protestors, Claim Militant Links, (<https://thewire.in/law/up-police-muslim-lawyer>, accessed 4th Dec 2021).

²³ The information provided under this section is not exhaustive due to (1) Only selective information is available in the public domain from the State of Jammu and Kashmir, (2) Due to internet crackdowns carried out by the state; even Kashmiri run media portals do not have the complete information, (3) Several arrests and detentions have happened post the Abrogation of Article 370 in Jammu and Kashmir, details of which are not entirely in the public domain; among other factors and reasons.

- Advocate Devinder Singh Behl's residence was raided by the National Investigation Agency (NIA) and was subsequently arrested on 01.08.2017 under an alleged terror funding case. Human rights activists in J&K reiterated that his arrest was due to his close association with Syed Ali Shah Geelani, who was a voice on human rights violations in Kashmir.
- Mian Abdul Qayoom, President of the Jammu and Kashmir High Court Bar Association (JKHCBA) and Nazir Ahmed Ronga, former President of JKHCBA were arrested on the intervening night of 4th and 5th August 2019, ahead of the Central Government's decision to abrogate Article 370 of the Indian Constitution. They were booked under the Public Safety Act (PSA), the preventive detention law of the State,²⁴ as part of the Indian government's measures to maintain public order in Kashmir. While Qayoom remained for almost a year in custody, Ronga was released in January 2020. Another lawyer Muhammad Ashraf Bhat, General Secretary of JKHCBA, was also detained under PSA on 13.09.2019 (and later released on 13.03.2020).
- On 24.09.2020, a 40-year old lawyer and activist, Babar Qadri was shot to death in his home in Kashmir by two masked men, who entered his house posing as clients. He was known to be a powerful orator and a known Kashmiri human rights defender.
- Advocate Zahid Ali Lone, was arrested under Public Safety Act (PSA) in Jammu and Kashmir, and was detained under the same for over two years. Subsequently, the Jammu & Kashmir High Court quashed the charges against him on 25.02.2021.
- Advocate Babar-ul-Islam, who is involved in several human rights cases, was illegally detained in the pretext of PSA, however the charges were not known.

²⁴ The PSA allows arresting and incarcerating a person without trial for two years on the mere 'suspicion' of disrupting law and order.