

Introduction

South Asia, Constrained

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

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

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

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

Definitions, Research Design and Reporting

Civic Space and Civil Society

According to the Office of the United Nations High Commissioner for Human Rights, ‘civic space’ is ‘the environment that enables civil society to play a role in the political, economic and social life of our societies. In particular, civic space allows individuals and groups to contribute to policy-making that affects their lives, including by: accessing information; engaging in dialogue; expressing dissent or disagreement; and joining together to express their views.’ Conceptually, civic space or the public sphere¹ is constructed by agencies, events, political reforms or interactions between state and citizens and the market, all loosely called civil society. They

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

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

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

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

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

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

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

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

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

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

³ Ibid.

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

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

Research Design: Questions, Methodology and Data Collection

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

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

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

⁴ Ibid.

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

Structure of the Report

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

Civic Space in South Asia: Key Findings

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

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

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

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

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

Recent Trends Concerning Freedom of Expression

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

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

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

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

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

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

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

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

Recent Trends Concerning Freedom of Peaceful Assembly

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

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

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

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

Recent Trends Concerning Freedom of Association

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

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

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

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

Minority and Human Rights Defenders

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

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

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

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

Further Shrinking of Civic Space during the Covid-19 Pandemic

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

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

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

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

Summary of Country Chapters

Afghanistan

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

Constitutional Context

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

Mass Media Law

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

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

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

Access to Information Law

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

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

The Law on Gatherings, Strikes, and Demonstrations

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

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

Economic Environment for CSOs

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

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

Political Environment for CSOs

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

Security Environment for CSOs

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

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

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

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

Bangladesh

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

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

Religious Minorities

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

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

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

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

Dalits and Excluded Groups

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

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

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

Status of Indigenous People

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

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

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

Sexual Minorities

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

Rights of Urdu-speaking People

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

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

Digital Security Act

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

Bhutan

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

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

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

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

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

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

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

India

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

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

Narrowing Civic Space in India

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

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

A new tool for administrative harassment is the introduction in 2020 of new regulations making NGO registration under the Income Tax Act non-permanent—which means NGOs must seek registration every five years. The BJP government has also used India’s enforcement agencies including the Enforcement Directorate (ED)—which investigates financial crimes—and the Central Bureau of Investigation (CBI)—the country’s premier criminal investigative agency—to target especially high-profile NGOs. Along with attempts to prevent groups working on critical issues, human rights defenders have also reported being subject to threats and intimidation by state agencies and ideological groups aligned to them.

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

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

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

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

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

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

The Closing of Civic Space for Minorities

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

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

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

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

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

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

Erased Civic Space in Kashmir

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

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

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

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

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

seeking inquiry into the illegal incarceration of children by security forces since August 2019 dismissed the petition in December 2019, concluding that there had been no illegal detention at all. This was in the face of a sea of evidence to the contrary, including a report filed by the police that itself reported minors in detention.

Nepal

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

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

Impediments to Civic Space for Religious Minorities

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

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

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

Response to Attempts to Curtail Civic Space

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

Civic Space during Covid-19

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

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

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

Pakistan

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

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

Politics of Religion

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

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

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

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

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

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

Politics of Security

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

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

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

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

Sri Lanka

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

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

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

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

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

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

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

Post-2019 Presidential Elections

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

Impact of Covid-19

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

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

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

Rights of Minorities

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

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

Key Recommendations

For national governments

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

For the international community

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

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

For civil society/minority groups

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