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## **PEACEFUL ANTI-CAA PROTESTS BEING SUPPRESSED IN PRIME MINISTER NARENDRA MODI'S CONSTITUENCY**

There is an ongoing crackdown on peaceful protests in Varanasi, the Lok Sabha constituency of the Prime Minister of India, Narendra Modi. The Uttar Pradesh State Government continues to use excessive force to intimidate and harass those critical of the Citizenship (Amendment) Act, 2019.

“While Prime Minister Narendra Modi has said that criticism makes a democracy strong, there is a total disregard by the state towards those who are protesting against the CAA in the Prime Minister's Lok Sabha constituency, Varanasi. Permissions for peaceful protests have been denied, protestors have been arrested, the state police have used excessive force and state officials have openly threatened and intimidated protestors,” said Avinash Kumar, Executive Director, Amnesty International India.

After interviewing over two dozen people from different parts of the city and gathering corroborating evidence, Amnesty International India calls on the Prime Minister of India and the Uttar Pradesh Government to end the gross violation of right to peaceful assembly in Varanasi and other parts of Uttar Pradesh.

In Varanasi, peaceful protests organised by students, activists and members from the general public started from 13 December 2019, when a solidarity march was stopped by the Station House Officer (SHO) of Jaitpura police station. Speaking to Amnesty International India, Abid Sharif, an activist who participated in the solidarity march said, “When we were about to start the solidarity march, the SHO Shashi Bhushan Rai met us and asked the reason for holding the protest march. When we told him that we are protesting against the CAA and NRC, he started threatening us. He said, “If you have to protest, do it at home. Does the road belong to your father? I will destroy your family. The new law will be implemented”.

The Varanasi police have ordered a probe into the incident but Rai continues to be the Investigating Officer for the protests that took place in Beniya Bagh, one of the two major protests in Varanasi. The second major protest took place on 20 December 2019 in Bajardiha. The police's response to both these protests has been heavy-handed, riddled

with excessive use of force, arbitrary arrests and differential treatment of assemblies. Between 11 and 23 December 2019, more than 70 people were arrested for peacefully protesting against the CAA in Varanasi. Amnesty International India also found that the police indiscriminately *lathi* charged peaceful protestors and innocent bystanders. It led to the death of an 8-year old child who was caught in a stampede and resulted in over a dozen injuries.

Interviews with the families of the arrested persons also show that police used violence during arrests. Muhammad Tufail, whose nephew Mohammad Naseem was arrested by the police in the middle of the night in Bajardiha said, “The police broke into his room and took him away. They broke down a door that fell on his sleeping father. When we asked the police for the grounds of arrest, they did not say anything and dragged Naseem away. The police hit him with lathis on the way to the police station. When we met him in jail, he told us that he was tortured at the police station as well. We saw him in pain.”

**The arrested persons were also harassed and intimidated in jail. Speaking to Amnesty International India, Iqbal, a shopkeeper in Varanasi and an arrested protestor said, “The jail authorities kept abusing us. We were imprisoned for more than two weeks. The jail officials would keep asking the Hindu protestors as to why they were supporting the Muslims. One day, they made us clean the jail for more than two hours. The blankets they provided us were very thin and not enough to protect us from the biting winter cold.”**

Most of the arrested persons were kept in custody for over 15 days, despite securing bail. Amnesty International India also documented the excessive delay by the jail authorities in providing access to counsel to the arrested persons. Speaking to Amnesty International India, Ekta Shekhar, a climate change activist who was also arrested for protesting said, “Despite peaceful protests, we were arrested. I wanted to request the district magistrate to give me mercy bail because I had to take care of my 14-month old child. For three days, we were not allowed to contact our family members and lawyers. We were treated as rioters and not as peaceful protestors.”

“The Prime Minister and the Uttar Pradesh Government must understand that protesting peacefully is not a crime. It is a right. The Prime Minister must lead the way and set an example by showing that peaceful dissent in his constituency, Varanasi is not being crushed. The Prime Minister must ensure that the Uttar Pradesh government sets up an independent investigation into all cases of police brutality. Those responsible must be prosecuted,” said Avinash Kumar.

#### **Additional Analysis and Key Findings**

The CAA was passed by the Indian Parliament on 11 December 2019. The Act legitimises discrimination on the basis of religion and stands in clear violation of the Constitution of India and international human rights law. After its passage, protests against CAA erupted across India. Between 11 and 14 January 2020, Amnesty International India’s delegates interviewed 41 persons, including 15 persons who were arrested for exercising their right to peaceful protest, their families and lawyers, community leaders,

students and civil society activists and gathered corroborating evidence in the form of photographs, videos, official documents and media reports. Amnesty International India has documented a clear pattern of use of excessive force during protests and arrests of peaceful protestors or persons who claimed to be innocent bystanders, delayed access to legal counsel, differential treatment of assemblies and bias in police and administrative response.

### **Right to Peaceful Assembly**

On 19 December, following an all-India call to protest against the CAA, students and social activists again gathered in Beniya Bagh, Varanasi defying Section 144 of the Code of Criminal Procedure which was imposed in the city. Section 144 empowers the district administration to issue orders prohibiting people from assembling at a particular place. **Activists and student leaders told Amnesty International India that the police and district administration impose Section 144 of the Code of Criminal Procedure “359 out of 365 days” in Varanasi, thus limiting the space to voice their dissent.** “The days it is not imposed are those when Prime Minister Modi comes to Varanasi,” Deepak, who was arrested while protesting against CAA and a student at Banaras Hindu University (BHU) told Amnesty International India.

More than 70 peaceful protestors were arrested by the Varanasi police for violating Section 144. After three days, the police filed another First Information Report (FIR) against them for violent rioting with deadly weapons to assaulting a public servant. The Varanasi police claim they were arrested because the protests turned violent.

The protestors told Amnesty International India that the district administration did not want any protests in Varanasi. It wanted to show that the people of Varanasi supported the decision of the government to pass the CAA. SP Rai, who was also charged with ‘promoting enmity between different groups on grounds of religion and for issuing awareness pamphlets on CAA said, “We had planned to protest in Beniya Bagh on the 19 December against CAA but the district administration had created a climate of fear and tried to intimidate us. On the night of 18 December 2019, the Varanasi police took over Beniya Bagh. It became like a police fortress. Despite this, we decided to carry on because it is our right to peacefully protest against a discriminatory legislation. We were arrested but we will continue to protest against this law.”

Another protestor told Amnesty International India that on 18 December 2019, a day before the protest, the BHU administration had issued a circular asking students to not protest against the CAA and NRC. This was followed by a notice from the district administration. Speaking to Amnesty International India, Raj Abhishek, Convenor, Joint Action Committee, Banaras Hindu University said, “In the evening, we received a notice from the Varanasi administration stating that Section 144 of the CrPC has been imposed in the city and no one can protest against the CAA and NRC within the BHU campus or in Varanasi city.” On 19 December 2019, the students were arrested by the Varanasi police for taking part in peaceful protests.

**Peaceful protests are a fundamental aspect of a vibrant society, and as recognized by the UN High Commissioner for Human Rights, states should recognise the positive role of peaceful protests as means to strengthen human rights. Article 21 of the International Covenant on Civil and Political Rights, to which India is a party also guarantees the right to peaceful assembly.** This right has been understood to be important not only as a means for the expression of views, but also as a means for people to come together and secure a forum for public debate.

Any restrictions to this right are only permissible if they are provided by law, for the purpose of protecting certain limited public interests, and are demonstrably necessary and proportionate to that purpose. States have very narrow margins for justifying restrictions to this right, and therefore restrictions must also be construed narrowly so that the rights are “practical and effective” not “theoretical or illusory”.

Any restrictions imposed which do not meet all elements of legality, necessity and proportionality constitute violations of the right. Amnesty International India believes that the blanket imposition of Section 144 CrPC, which prevent people from assembling together in Varanasi does not comply with the three requirements. It is unclear what criteria is used to decide to prohibit peaceful assemblies or what mechanisms are available to challenge the decision, in violation of the requirement of legality. The decision to deprive an entire population of the city and also the state their right to peaceful assembly is a particularly broad and sweeping restriction, which clearly fails the other two requirements of proportionality and necessity.

This was also underlined by the Supreme Court of India in the recent case of *Anuradha Bhasin v. Union of India*, where the Court held that “prohibitory orders under Section 144 CrPC cannot be imposed to suppress legitimate expression of opinion or grievance or exercise of any democratic rights”. It further said that a District Magistrate ordering Section 144 was “duty-bound to balance rights and restrictions based on the principles of proportionality and thereafter, apply the least intrusive measure.”

#### **Delayed Access to Counsel**

Among those who were arrested in Beniya Bagh was Ekta Shekhar, a climate change activist in Varanasi. Ekta refutes the police allegations that the protests were violent. Ekta claims the police and the district administration denied her access to her family members when in jail.

**Speaking to Amnesty International India, she said, “The Uttar Pradesh jail manual says that a prisoner can meet a relative on a Saturday. But when I tried to meet my husband, Ravi Shekhar who was kept in the male barracks, I was denied permission. It was only after my husband and others went on a hunger strike, the jail authorities allowed us to meet that too for only five minutes. They did not even let me touch my husband’s hand. The jail authorities kept telling us that we were causing ‘riots’ in Varanasi.”**

Providing timely access to lawyers, family members and medical professionals for persons in custody is an important safeguard against torture and other ill-treatment. Access to lawyers is an important safeguard for many human rights, such as the right

to a fair trial and ensuring the detainee's rights are respected in custody. This includes the right to access medical care when needed as well as protection from coerced confessions and torture and other ill-treatment. Denial of this right amounts in itself a form of ill-treatment. Lawyers and family members of detained persons are entitled to be promptly informed of where the detained person is being held and lawyers and independent medical professionals should have unrestricted access to detainees.

### **Biased Administration**

The arrested protestors claim that the Varanasi district administration intimidated and harassed them when they were in jail. The jail officials also threatened and intimidated the friends, relatives and family of the arrested persons who came to jail to meet them.

Rajat, a student of Banaras Hindu University and a member of the Joint Action Committee said, "When we were asking the jail officials to allow us to meet our friends, our photographs were clicked by the officials. One such photograph was published in the next day's newspaper under which the District Magistrate had issued a statement saying that all the persons arrested in relation to the protests are 'rioters' and the National Security Act (NSA), a counter-terror law will be invoked against them. They also called us 'rioters' and declared that the NSA will be invoked against us as well."

Jagriti Rahi, an activist told Amnesty International India that the police kept delaying her access to the arrested persons. She said, "On 20 December 2019, the police asked me to come in the evening saying that the FIR has not yet been registered. In the evening, I was told to come at night. At 10 PM when I reached the police station, the officers rudely asked me to stop troubling them." The next day, the police started recording the persons who had come to meet the protestors on camera. She was told that the recording would be viewed by the district magistrate and orders of arrest would be passed against all those who had come to the jail to meet the protestors. "They were really trying to intimidate us. We were denied permission to meet the protestors on the second day also and the FIR was not yet registered. Then on the third day, the District Magistrate told us that if we have to get bail for the protestors we will have to arrange bail bonds of Rs. 3-5 lakh for each person. We were able to arrange the bail bonds but no official was ready to sign the release papers."

On 20 December, a delegation comprising of political leaders and civil society members met the District Magistrate of Varanasi . The primary demands of the delegation was that an official FIR must be filed and that all the protestors must be released from jail.

**Speaking to Amnesty International India, Praveen Kumar Singh, a social worker said, "When we met the district Magistrate, he told us that if National Register of Citizens (NRC) can be implemented in Assam then why should there be a problem in Uttar Pradesh? He asked us why we are instigating the Muslims to protest against the CAA and NRC. We told him that we are not instigating anyone and that the protests were peaceful. The District Magistrate told us that they will arrest every protestor and will not spare them."**

### **Excessive Use of Force During Arrests**

On 20 December 2019, a peaceful protest march began from Bajardiha. Rashid Jamal, Imam of the local mosque in Bajardiha told Amnesty International India that the protest was neither announced in the mosque nor put up on social media. People just organically gathered after the Friday prayers and then others joined in. “When our rights are attacked, when the constitution is attacked, it is the right and duty of every citizen to raise his or her voice,” said Jamal.

Following the national call for protests, people gathered after the Friday prayer and within a few minutes of marching, were stopped by the police. The police first tried to disperse the crowd and then went onto *lathi* charge on the protestors, causing a stampede that resulted in the death of an 8-year-old Sagir Ahmed and critically injured 16-year old, Tanvir Alam.

Speaking to Amnesty International India, Akbar Ali, Tanvir Alam’s uncle said, “After the Friday prayers got over, at 2:30 PM the crowd started to gather. In the beginning, there were about 50 people but later increased to 800. Even though the protests were peaceful, the police started to disperse the crowd. While some went away, there were many who were still on the street. There is a *maidan* (playground) here. You will always find children playing there. The police started brutally beating up the people there. This caused a stampede. Due to panic, many people fell on each other. Our nephew might have been crushed by the crowd. We reached the playground and helped a lot of boys who were hurt, but we could not spot our nephew. After a few minutes, we found him unconscious, lying on the road, bleeding profusely from his forehead. We immediately took him to the nearby hospital and then from there to the Trauma Centre.”

When Amnesty International India spoke to them, Tanvir was still in the ICU. The family hoped that he would be discharged soon. They have not yet heard from the state administration on any investigation regarding the police brutality. The family has been promised to be reimbursed for their medical expenses by the district administration but they seem sceptical on whether the promise will be kept.

For Sagir’s family, the police brutality cost them their son’s life. The 8-year-old was an innocent bystander to the protests. After the protests and the police crackdown on them was over, the family realised that he was missing. A neighbour later brought a picture from the Trauma Center that Vakeel Ahmed, Sagir’s father recognised and rushed to the Center to find that his son had died.

Irshad Ahmed, Sagir’s Uncle told Amnesty International India that Sagir was playing with his daughter when he took his cycle and went out. “He must have gone to see the protest. We started searching for him and learnt that those who were injured had been taken to the Trauma Centre. At 11 PM, after searching for him for over four hours, we were informed that Sagir had died. After waiting for an hour, we were taken to the mortuary to recognise Sagir’s body but it was only at 3 AM, after the post mortem, that were we given his body.”

The police told Sagir's family to bury his body before dawn. "They asked us to hurriedly bury him in the middle of the night, as it may cause trouble and chaos in the morning." Four weeks later, they had still not received his post mortem report. The District Magistrate has assured them that compensation will be given.

**The intimidation and crackdown by the police continues. Many who were injured during the 20 December protests left their homes and sought medical treatment in other areas due to fear of reprisal from the authorities. There is constant police patrolling in the areas where the protests took place, even at night when the police goes around knocking on doors with their lathis. Amnesty International India found a notice pasted on the walls of the local police station in Bajardiha that had photos taken from the day of the protest. The notice included an appeal to identify and report the protestors and even announced a prize for those who report them.**

In many areas across Varanasi, houses have also been vandalized. Amnesty International India found two instances of police breaking into houses in the middle of the night to make arrests. In Nadesar, Mohammed Danish's house was broken into after there was a slight delay in opening the door. Mohammed Naseem from Bajardiha was also arrested in a similar manner. The police came in from the upper storey of the house, broke down the doors and arrested him in the middle of the night.

Naseem's father passed away four days after his arrest. The family claims that he died in shock from his son's arrest.

Under international human rights law and standards, police are permitted to only use force where absolutely necessary and proportionate to the legitimate objective they are trying to achieve. It should be used as a last resort, and only when strictly unavoidable to protect life. It should be aimed at stopping violence. **Footage and photographs submitted by various protestors and bystanders to Amnesty International India show police officers using lathis to brutally beat peaceful protestors in the narrow bylanes of Bajardiha. The protestors are clearly not acting violently or resisting, but police continued to beat them. The police also pelted stones to disperse the crowd.**

This is clearly an unlawful use of force - completely unnecessary and disproportionate. Unless there is a risk of death or serious injury, *lathis* should never aim at vulnerable parts of the body, as they could constitute a lethal use of force or cause serious injury. Such use will also be seen as aggressive and threatening and may therefore lead to escalation of violence.

### **Ongoing crushing of dissent in Varanasi**

The police crackdown in Varanasi continues. Protestors have told Amnesty International India that the police have told them not to protest again. Activists claim that the district administration supports those who organise solidarity marches for CAA but denies space for anti-CAA protestors displaying differential treatment of assemblies. This type of policing appears deliberate, raising concern that state law enforcement actors may favour pro-government and nationalist demonstrations over other types of assemblies.

Mohammed Shahid, a student residing in Chaukaghat told Amnesty International India that the police has induced a climate of fear in his home. “The police told us to stay away from politics. They said that I will not be able to get my passport, or go outside or even get a job. They have created such fear in my family that they have stopped allowing me to step out of the house. If anyone even calls my name from outside, my father goes out first to check if it is somebody from the Local Intelligence Unit (LIU) or Intelligence Bureau. No one from my family has ever gone to jail. We are not very educated nor do we have a lot of resources. The regular visits from the LIU has scared my parents.”

Ravi Shekhar, an activist said, “If you try to participate in an anti-CAA protest, the government will arrest you and threaten to slap laws like sedition on you. But if you are pro-CAA, you can organise rallies and solidarity events. In fact, the district administration will support you. The district administration denies permission to anti-CAA protests by saying that there is Section 144 imposed in the city. But then shouldn't this also be applicable for the pro-CAA supporters? Is Section 144 only for those who protest against this government?”

Mohammed Arif, a senior activist based in Varanasi told Amnesty International India, “The administration must conduct themselves according to the Constitution of India. However, right now they are conducting themselves according to the ruling government. And the government is intolerant towards any protest against the CAA. It is clear that those who support the government can hold a protest anytime they want but those who are critical are hounded by this government.”

Arbitrary detention, use of excessive force, differential treatment of assemblies and torture in custody has sadly become commonplace in Uttar Pradesh. The way the Uttar Pradesh government has by and large chosen to respond to the anti-CAA protests in Varanasi and other regions of Uttar Pradesh has been massively disproportionate, unwarranted and unlawful. The brutal crackdown on peaceful protest must end immediately.