

Tom Lantos Human Rights Commission
Hearing on “India: Recent Human Rights Reporting”
Statement of Dr. Waris Husain, SJD
Senior Legal Advisor, American Bar Association Center for Human Rights
March 21, 2024

Chairman Smith, Chairman McGovern, and members of the Commission:

Thank you for the opportunity to appear before you today. Before I begin, let me state that my remarks reflect my personal opinion and should not be construed as representing policy of the American Bar Association (ABA).

In October 2023, the ABA Center for Human Rights released a report on the adverse impact of counter-terrorism laws on human rights defenders and Financial Action Task Force (FATF) compliance in India. The report reflects the views of the authors, who are experts in India’s relationship with FATF and its use of counter-terrorism laws. Based on this report, I will discuss the problem of the misuse of counterterrorism measures in India today, and the impact of such practices on achieving peace and security goals.

India became a member of FATF in 2010 and has since risen in prominence in FATF. FATF is an international organization of states combatting terrorism and terrorism financing. India has repeatedly amended its anti-terrorism and money laundering laws allegedly to be in compliance with FATF’s requirements. In so doing however, India has expanded the scope of these laws in ways that have resulted in wide-ranging adverse impacts on non-profit organizations (NPOs) and human rights defenders who have been targeted with prosecutions, in many instances, for exercising their civic freedoms by critiquing the government.

From the Unlawful Activities Prevention Act (UAPA), the Prevention of Money Laundering Act (PMLA), and the Foreign Contribution (Regulation) Act (FCRA) which constitute major parts of India’s counter-terrorism regime, critics have argued that these laws define terrorism in such a vague and imprecise way, that they have been used to punish non-violent political activity, rendering human rights defenders, political opponents, and dissenters vulnerable to malicious prosecution.

A survey of human rights defender cases who have been prosecuted under the above laws demonstrates how the government of India has used its amended counter-terrorism financing legislation to target human rights defenders and close civic space. The first trend begins at the onset of cases, wherein investigating officers and others involved in the police process use vague allegations and inconsistent evidence to attempt to punish human rights defenders and NPO’s/ NGO’s that are critical of the ruling government. This harassment was seen in the case of Waheedur Rehman Parra, a former journalist, social activist, and current president of the youth wing of the Peoples’ Democratic Party (PDP) in Jammu and Kashmir and other cases of Kashmiri human rights defenders.

The second trend is that the punishment is oftentimes meant to be the process itself: individuals are arrested, given extensive pre-trial detention, repeatedly denied bail, and their cases could take

years to be resolved by the courts and could involve multiple rounds of appeals to various courts. This was seen in the case of journalist Siddique Kappan, who was charged under the UAPA and the PMLA. Kappan, who in total spent over two years in pre-trial detention, remained in jail even after the Supreme Court granted bail. Extensive pretrial detention is also exemplified by the Bhima Koregaon Case, where individuals including poets, academics, and others who stood in opposition to the current ruling administration spent over six years in pretrial detention for charges under the UAPA. This 'process as the punishment' concept stands in contravention of FATF's recommendations that call for the respect of due process and fair trial rights for individuals.

The continued treatment of human rights defenders and certain NPOs/NGOs in this manner could, in my opinion, result in a silencing of political opinion in the country which will impact democracy, the rule of law, and the credibility of India as an international partner in counter-terrorism.

As has been demonstrated above, India has used FATF compliance as a justification for expanding its counter-terrorism financing laws, rendering them overbroad, vague and susceptible to misuse. The increasing scope of the laws has facilitated the persecution of human rights defenders, and has often led to a failure by the Indian government to engage in objective risk assessments when enforcing these laws as required by FATF.

In my opinion, which does not reflect the ABA's policy, in order to retain its long running security relationship with India, U.S. policy makers should raise these issues with their Indian counterparts to ensure that India remains an effective partner that isn't directing resources and laws meant to fight terrorism and its financing in a political manner against human rights defenders and NGOs.

Waris Husain, Bio

Dr. Waris Husain is Legal Advisor for South and Southeast Asia with the ABA Center for Human Rights Justice Defenders Program. Prior to joining the Center, Dr. Husain was a Policy Analyst at the U.S. Commission on International Religious Freedom covering the South Asia region. He is an adjunct professor of international law at the Howard University School of Law. Dr. Husain received his S.J.D. degree from American University Washington College of Law in 2017, specializing in constitutional and comparative law in South Asia. Dr. Husain received his J.D. from the Howard University School of Law in 2011 and his LL.M. at American University Washington College of Law.

