

22 June 2016

STATEMENT

BHRC calls on India to abolish punitive foreign NGO rules, and reverse human rights group's suspension

The Bar Human Rights Committee (BHRC) calls upon the Indian government to immediately lift the six-month suspension order placed upon the registration of the Lawyers Collective on 1st June 2016.

BHRC are deeply concerned about the punitive and disproportionate nature of this suspension, and the impact it will have on the vulnerable members of Indian society, including women, workers and marginalised communities, whom the Lawyers Collective has sought over many years to protect, including through public interest litigation.

The Lawyers Collective is a non-governmental organisation (NGO) run by two prominent human rights lawyers: Indira Jaising, who is a former member of the United Nations Committee on the Elimination of Discrimination Against Women (CEDAW), and Anand Grover, who was the United Nations Special Rapporteur on the Right to Health from 2008 to 2014. Many of their legal challenges, for example on sexual orientation discrimination or on behalf of individuals affected by HIV, have pitted them against the Indian government.

The Indian government asserts that the Lawyers Collective, through Ms Jaising and Mr Grover, has violated certain provisions of the Foreign Contribution Regulation Act (FCRA), which regulates the acceptance and use of foreign assistance and prohibits the same in relation to activities deemed “detrimental” to the Indian national interest. It imposed the six-month suspension order against the Lawyers Collective despite a detailed rebuttal provided by the NGO. Disconcertingly, the Indian government appears to have leaked its suspension decision through the media, and before the NGO received any official notification.

The right to access funding is a direct and essential component of the right to freedom of association, which is protected in international law by Article 22 International Covenant on Civil and Political Rights (ICCPR). NGOs engaged in the protection of human rights generally function on a “not for profit” basis and therefore depend heavily on external sources of funding to carry out their work. Therefore, barriers and restrictions to funding sources directly undermine the ability of NGOs to function and therefore the right of their members to freedom of association and the right to freedom of expression under Articles 22 and 19 ICCPR.

The United Nations Human Rights Committee (UNHRC) has repeatedly expressed concern over restrictions on foreign funding as an impediment to the right to freedom of association and expression. It has set out a strict, narrow test¹ which restrictions on funding must meet in order to comply with Article 22. They must be prescribed by law, and must be necessary in a democratic society to protect one of the following aims, namely national security or public safety, public order, public health or morals, or the rights and freedoms of others.

UNHRC has stated that “the reference to the notion of “democratic society” indicates that the existence and operation of associations, including those which peacefully promote ideas not necessarily favourably received by the government or the majority of the population, is a cornerstone of a democratic society. The mere existence of reasonable and objective justifications for limiting the right to freedom of association is not sufficient. The State party must further demonstrate that the prohibition of an association is necessary to avert a real and not only hypothetical danger to national security or democratic order, and that less intrusive measures would be insufficient to achieve the same purpose”²

Although India has submitted a reservation to Article 22 ICCPR³, the reservation is in limited terms and does not seek to derogate from Article 22. Further, it must remain compatible with the object and purpose of Article 22. The reservation therefore does not detract from India’s obligations to conform with the requirements, and interpretation, of Article 22. It is the opinion of the BHRC that the provisions of the FCRA do not do so.⁴

¹ Aleksander Belyatsky et al. v. Belarus, U.N. Human Rights Committee, Communication No. 1296/2004, U.N. Doc. CCPR/C/90/D/1296/2004, at para. 7.3 (July 24, 2007) (*Belyatsky*)

² At para 7.3 *Belyatsky*

³ Reservation of India to the ICCPR as follows: ‘With reference to (...) article(s) (...) 22 of the International Covenant on Civil and Political Rights the Government of the Republic of India declares that the provisions of the said [article] shall be so applied as to be in conformity with the provisions of article 19 of the Constitution of India.’ Article 19 of the Indian Constitution provides the ‘right to form an association’. This right is itself recognised as a component of the right to freedom of association pursuant to Article 22. It therefore does not appear to derogate from the autonomous meaning of Article 22.

⁴ See Human Rights Committee, General Comment 24, General comment on issues relating to reservations made upon ratification or accession to the Covenant or the Optional Protocols thereto or in relation to declarations under article 41 of the Covenant, UN Doc CCPR/C/21/Rev.1/Add.6 (1994), para 19 and 20.

The conditions for registration, or for its removal, set out within the FCRA consist of broad, undefined terms, such as “economic interest of the state” or “public interest”. The failure to define these critical terms as well as their vague, general nature leaves them open to abuse by the government.

The BHRC agrees with the statement made in June 2016 by the UN Special Rapporteurs on the Rights to Freedom of Peaceful Assembly and of Association, that FCRA restrictions are not in compliance with international law, principles and standards. The BHRC is seriously concerned that the ever-increasing restrictions on foreign funding for NGOs are incompatible with the rights to freedom of association and expression under Articles 22 and 19 ICCPR.

Moreover, it appears that the FCRA provisions are being used to obstruct, harass and silence those who seek to promote a social, cultural or human rights agenda with which the government does not agree. Recent suspensions or restrictions placed upon other NGOs (including the Ford Foundation, Greenpeace India, and the Sabrang Trust) lend serious weight to the concern that FCRA regime is being abused by the government to undermine the rule of law and the protection of human rights in India.

The BHRC urges the Indian government to take immediate steps to repeal or amend the FCRA, to revoke the suspension of the registration of the Lawyers Collective and to ensure that the work of human rights lawyers and defenders is not impeded through disproportionate and unnecessary obstacles.

Further, the BHRC calls upon the UK government to seek assurances from the Indian government that it will not harass or hamper the activities of civil society, human rights lawyers and defenders in their efforts to promote and protect equality and human rights in India, as well as to uphold the rule of law.

ENDS.

NOTES FOR EDITORS

1. For an interview with our spokesperson, please contact Ed Gillett, Coordinator, on +44 (0)7854 197862
2. For more information on the Bar Human Rights Committee (BHRC), visit our website at <http://www.barhumanrights.org.uk>
3. The Bar Human Rights Committee of England and Wales (BHRC) is the international human rights arm of the Bar of England and Wales, working to protect the rights of advocates, judges and human rights defenders around the world. The BHRC is concerned with defending the rule of law and internationally recognised legal standards relating to human rights and the right to a fair trial. It is independent of the Bar Council.

Bar Human Rights Committee of England and Wales (BHRC), 53-54 Doughty Street, London WC1N 2LS
Chair: Kirsty Brimelow QC | Vice-Chairs: Blinne Ní Ghrálaigh & Schona Jolly

coordination@barhumanrights.org.uk | www.barhumanrights.org.uk
+44 (0) 20 7404 1313 ext. 359 | +44 (0) 7854 197862