**Response to Joint Questionnaire by Special Rapporteur Mandate Holders**

**on Protecting human rights during and after COVID-19**

**Common Questions**

Response specific to emergency measures implemented in India

**Submitted by the Commonwealth Human Rights Initiative (CHRI)**

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The Commonwealth Human Rights Initiative (CHRI) welcomes the opportunity to respond to the joint questionnaire of the Special Procedure mandate holders to explores the impact of COVID-19 on the situation of human rights in States, State response to the pandemic and understanding the specific vulnerabilities of marginalised communities. The following submission answers the common questions raised by the questionnaire with reference to the emergency measures implemented in India to contain the pandemic and their multifaceted impact on human rights.

**Common questions:**

**Impact on human rights**

* Please explain the impact of the pandemic on the enjoyment of human rights and what actions have been taken by the State to respect, protect and fulfil human rights?

The COVID-19 pandemic brought the whole of India to a standstill for a long period, much like the rest of the world. Although the Government of India has introduced a phased opening of the country 1 June 2020 onwards, this unprecedented public health crisis has impacted every aspect of life known to governments, communities and individuals. Attempts were made to curb the contagion and mitigate the imminent health threat by taking extraordinary measures such as a complete national lockdown as well as curfews in different parts of the country. The pandemic posed a serious threat to the rights to life and health of the general population and brought to fore the importance of universal public health care.

However, it is the manner of implementing these ‘necessary’ measures that disproportionately impacted fundamental human rights of individuals and communities, leaving a majority of the population uncertain and unprepared for living their lives for a considerable time under these emergency measures. Their fallout on human rights, especially that of the marginalised and vulnerable groups, has been stark and extensive. In addition to the violations of rights ancillary to the emergency measures, there were also instances of the State’s response and actions being ‘excessive’ or ‘targeting’ certain persons, including human rights defenders, ethnic and religious minorities, journalists, protestors and dissidents.

* Are there any measures put in place in your country following the pandemic which have had a limiting effect on human rights? If so, please list them, provide an explanation for their adoption and indicate the time-frame by which they will be lifted?

In India, a nation-wide lockdown was imposed by Prime Minister Narendra Modi on 24 March 2020 as a state of emergency for an initial period of 21 days, restricting the right to free movement of the entire 1.3 billion population as a preventive measure.[[1]](#footnote-1) However, people were given a mere four-hour warning before imposing the first phase of lockdown[[2]](#footnote-2); this continued for four such phases with the lockdown being extended at the end of every phase till 30 May 2020. However, even as cases in India continued to see an exponential rise, the “Unlock 1.0” was announced, whereby the lockdown continued only in the containment zones and services began to resume in a phased manner.[[3]](#footnote-3) Although the need for normalcy and economic exigencies were the main reasons, the unlock seems to have increased the risk of soaring cases and steep death graph.[[4]](#footnote-4) Although the restrictions are being gradually lifted, the state governments have the power to regulate movement according to the conditions within their territories.[[5]](#footnote-5)

* 1. Were these measures determined by law? If yes, please indicate the relevant legislation.

Yes, the measures were determined by law and the Government relied on Constitutional provisions read with two other laws that provided the Central Government the legal basis for taking necessary steps against the pandemic.

The Central Government took relied upon Articles 256 and 257 of the Constitution which allowed it give directions on implementing the laws made by Parliament and stipulating that the executive power of the states is exercised without “impeding or prejudicing” the executive power of the Centre.

With this constitutional foundation, it took recourse to the Epidemic Diseases Act – 1897 (EDA) and the Disaster Management Act – 2005 (DMA).[[6]](#footnote-6)

* 1. Why were these measures necessary to respond to the COVID-19 situation?

The measures were necessary given the rapid increase of COVID cases in India. Given the density of population and the condition of the health care infrastructure in the country, these measures were essential to curb the contagion as community spread would have caused higher death rates and pressurised the already limited healthcare infrastructure.

* 1. Were these measures proportional in view of their expected results to counter the pandemic?

The measures by themselves were necessary in the context in which they were put in place. But the extended duration of the lockdown and the manner of enforcement of the measures adversely affected their proportionality. They were implemented at a four-hour, short notice and without sufficient information for the public at large to prepare themselves for the situation of emergency. The measures were not proportionate for the following reasons:

1. **Extent of impact:**

The proportionality needs to be viewed from the lens of its impact on a majority of the population, especially the most vulnerable sections of the society. The measures were essential in ensuring that the spread of the pandemic is slowed down; however, it is essential to view whether they were responsive to the evaluated risks, especially since they curtailed fundamental human rights.[[7]](#footnote-7)

In addition to completely restricting movement and suspending regular life, the lockdown in India caused loss of dignity, livelihood and rights.[[8]](#footnote-8) Even basic necessities of food and shelter became scarce for the marginalised groups such as inter-state migrant labourers, workers from the unorganised sector, daily wage earners, the homeless and the poor.[[9]](#footnote-9) The differential impact of the pandemic on the gendered socio-economic realities,[[10]](#footnote-10) rights of the LGBTQ+ community,[[11]](#footnote-11) the elderly,[[12]](#footnote-12) health-care providers[[13]](#footnote-13) and other frontline workers[[14]](#footnote-14) as well as other socio-cultural marginalisations like class and caste divisions,[[15]](#footnote-15) ought to have reflected in the legitimate health care strategies and lockdown enforcement. A tailored approach based on dialogue with the affected groups, experts and other stakeholders would have been effective to tackle the pandemic in line with the requirements and susceptibilities of the different states of the Union. As has been pointed out, while measures such lockdown and physical distancing have been important in global lessons, in India, they have clearly reflected a class bias, disproportionately affecting socio-economically disadvantaged.[[16]](#footnote-16)

1. **Manner of enforcement – excessive use of force in enforcing the lockdown**

India witnessed one of the strictest lockdown rules in the world and the police force has been given sweeping powers to enforce it. The police force has had to be on the frontline of the pandemic management without any training or experience to tackle such an unprecedented situation in a vast and populated country like India.[[17]](#footnote-17) However, this enforcement has also taken dehumanising and punitive form and police was witnessed using excessive force to implement the lockdown rules. The lockdown is being enforced more as a law and order issue than as a public health necessity in the absence of defined guidelines or a lockdown management plan.[[18]](#footnote-18)

In India, there have been alarming accounts of police violence and ill-treatment while enforcing the nationwide lockdown.[[19]](#footnote-19) In several states, police imposed corporal punishment and stress positions such as prolonged squatting, sit-ups, *murga* (rooster) position on people who flouted the curfew and used disproportionate force on alleged ‘violators’.[[20]](#footnote-20) A CHRI study found that beatings by police for alleged violations of restrictions caused the deaths of at least 12 people in various parts of the country in the first five weeks of the national lockdown; three out which were death by suicides because of alleged public humiliation that the victims suffered.[[21]](#footnote-21) This flags the disproportionality in the manner of enforcing a ‘necessary’ measure like the lockdown. There also has been minimal effort, to ensure accountability of the police force for such excesses.

1. **Relaxation in the intensive lockdown measures after over two months** were allowed due to serious economic pressures. However, in consequence, as many as 24 Indian states and Union Territories showed a surge in cases.[[22]](#footnote-22) In addition to that, phenomenon such as reverse migration, in the absence of quality and affordable healthcare in all parts of the country, are expected to heighten the risk of the infection spreading across the country, nullifying the limited benefits of the lockdown.[[23]](#footnote-23)
   1. Did these measures have any discriminatory effects on various groups of the population? If so, please indicate which ones and why.

Yes, the measures taken by the State did have discriminatory effects on the socio-economically vulnerable and other marginalised groups in the country. Some of them are as follows:

1. **Migrant labourers and unorganised sector**

In the immediate aftermath of the lockdown announcement, millions of migrant labourers and their children were left without shelter, livelihood or basic facilities.[[24]](#footnote-24) Many of them began to cross state borders to reach their villages. With a sudden stopping of railways and roadways and closing of inter-state borders, the migrant workers have been left stranded on the streets with no source for food and other essentials. This large exodus has been the worst migrant crisis India has seen after the partition in 1947.[[25]](#footnote-25)

Television and print media reported tens of thousands of men, women and children walked long distances in conditions of acute distress to try to reach their homes in Uttar Pradesh, Uttarakhand, Bihar, Haryana, Punjab, Rajasthan and Madhya Pradesh. Many of them succumbed to the long walks, some of them were killed by the moving vehicles and many were arrested for violating the lockdown.[[26]](#footnote-26) In another instance, migrant workers crossing state borders were “disinfected” by showering them with bleach and other such chemicals which sparked outrage in the country.[[27]](#footnote-27)

This created an unprecedented situation and visuals from across the country were highly concerning and demonstrated the apathy of the planning of this lockdown and struggles of migrant workers. In the absence of wages, homes and food, the migrant workers find it a better ‘choice’ to head back to their villages. Such extra-ordinary situation called for exemplary actions by the state to facilitate them, maintaining appropriate social and medical practices. It was only 53 days into the lockdown that the Central Government announced the creation of a national migrant information system to “facilitate their seamless movement across states”.[[28]](#footnote-28) While towards the beginning of May 2020, the Government started special “*shramik*” trains to ferry lakhs of stranded migrants back to their hometowns; the decision, however, came in only after they had struggled for two months in the most dire situations.[[29]](#footnote-29)

UN High Commissioner Bachelet has also expressed distress and regret on the plight of millions of migrant workers in India and government measures that compromise individual privacy. According to her measures such as stamping hands, sticking notices outside residences will unduly stigmatise people within the community. She also welcomed the order of the Supreme Court directing the governments to provide enough food, water, beds and supplies as well as psychological counselling in shelters that should be run by volunteers and not security forces.[[30]](#footnote-30)

1. **Xenophobic and racist narratives – Cases such as the Tablighi Jamaat and discrimination faced by the people from the North-Eastern parts of the country**

The pandemic has forced to maintain physical distancing, but has also fostered communal othering, xenophobia and stigmatisation of certain minorities in the country. This was seen especially after the mass congregation of the Islamic missionary group – Tablighi Jamaat, in the New Delhi neighbourhood of Nizamuddin, for which around 3500 people had gathered, from India and abroad.[[31]](#footnote-31) The outbreak from this congregation was considered as a corona virus “super spreader” with religious tensions, xenophobic responses and hate speeches, being rampant on social media, including by political leaders.[[32]](#footnote-32) This has resulted in the Muslim community being stigmatised further in the already xenophobic political narrative in the country.[[33]](#footnote-33) With misinformation spreading fast, cases of discrimination against the broader Muslim community have been reported from many states in India.[[34]](#footnote-34)

The people in the North-eastern states are increasingly facing racism and discrimination in the rest of the country since the outbreak of the coronavirus,[[35]](#footnote-35) including verbal abuse and physical assault for their similarities with the Chinese phenotype.[[36]](#footnote-36) Over 22 cases of racial discrimination or hate crimes were reported against them only between 7 February and 25 March 2020 and they continue in some forms.[[37]](#footnote-37) The Northeast Indians were also forcibly quarantined, denied entry into apartment complexes, evicted as well as threatened with eviction, forced to leave public spaces and transport, etc.

Additionally, as previously mentioned and referred to in this questionnaire, the impact of the measures has taken the form of discrimination on grounds of intersectional issues of gender and sexuality.

* Please explain if economic recovery and financial assistance mechanisms to reduce the social economic impact of the measures adopted have been subjected to prior human rights impact assessments?

The Central Government announced a relief package of $22.6 billion to assist the poor hit economically due to the lockdown with the intention to benefit the migrant workers through cash transfers and initiatives for food security,[[38]](#footnote-38) it became clear that a significant proportion of the affected population could not to avail the facilities except only those who were registered with the federal food welfare scheme were able to secure benefits.[[39]](#footnote-39)

According to a Government of India report filed with the Supreme Court of India, as of 7 April, state governments operated 22,567 relief camps for stranded migrant workers, of which 15,541 camps (amounting to 68% of all) were operated by Kerala, 1,135 camps by Maharashtra, 178 camps by Tamil Nadu and smaller numbers by other states. NGOs were operating 3,909 camps.[[40]](#footnote-40) As previously mentioned, the Government also started special trains to ferry migrants workers to their hometowns.[[41]](#footnote-41)

On 12 May, Narendra Modi announced that the government would provide 20 trillion rupees ($266 billion) in support package in fiscal and monetary measures to support the economy.[[42]](#footnote-42) With the growth rate of 3.1%[[43]](#footnote-43) and unemployment at a significant high of 26% in April 2020, and gradually exacerbating as the consequence, COVID-19 pandemic has impacted all sectors – primary, secondary and tertiary – of the Indian economy. Some of the efforts taken by the Government to mitigate impact on some of the sectors are as follows:

* Immediate and urgent steps are needed to harvest crops and secure the farmers by allocating transport and other logistical support to move the crops from the fields directly to the warehouses with the help of the private sector.[[44]](#footnote-44)
* In the second week of May, companies started preparations for restarting operations. Some companies have opened offices with the maximum permitted strength of 33% while others took a more cautious approach of as low as five per cent.[[45]](#footnote-45)
* Mobile manufacturing incentives were offered by the government to mobile manufacturers in the beginning of June 2020. This include a ₹50,000 crore (US$7.0 billion) production-linked incentive on goods made locally in India.[[46]](#footnote-46)

The Government has also created the PM CARES FUND (Prime Minister’s Citizen Assistance and Relief in Emergency Situations Fund) in March 2020 which accepted donations which are to be used for combatting and containing the corona crisis and provide relief efforts.[[47]](#footnote-47) However, there are objections over transparency in this case as the Prime Minister’s Office has stated that the fund “is not a public authority” and does not fall under the Right to Information Act.[[48]](#footnote-48)

Some state governments such as Kerala,[[49]](#footnote-49) Odisha[[50]](#footnote-50) and Rajasthan[[51]](#footnote-51) have implemented effective and sustainable strategies. However, there have been calls for greater cooperation between the Centre and state governments to successfully tackle the pandemic.[[52]](#footnote-52)

**Statistical information**

* Which groups have been identified as particularly vulnerable to socio-economic hardship in the context of the COVID-19 crisis?

As highlighted previously, the migrant workers and daily-wage earners from the unorganised sector have been worst impacted and remain particularly vulnerable to socio-economic hardship in the context of COVID-19 crisis. Conditions of the socio-economically marginalised groups, such as sex-workers, contract labourers, other socially disadvantaged communities, persons with disabilities,[[53]](#footnote-53) farmers, women and children etc. have also exacerbated due to the COVID-19 crisis.

* Please provide data on incidents of domestic violence, including femicides disaggregated by a) intimate partner femicide b) family related femicide based on the relationship between the perpetrator and the victim/s and c) all other femicides based on the country.

Domestic violence in India has reportedly increased during the lockdown period, as has also been reported globally. In data provided by the National Commission of Women (NCW) in mid-April, which suggested an almost 100% increase in domestic violence during the lockdown.[[54]](#footnote-54)

**Protection of various groups at risk**

In addition to migrant workers and other marginalised groups, the following groups are at risk during the pandemic and in further restrictions that may be imposed till the pandemic is curbed:

* **Detained and incarcerated persons, including persons under state custody**

During this pandemic, given its rapid transmission, there is an increased vulnerability among people living in governmental and non-governmental institutions like prisons, institutions set up under the juvenile justice law and other safe living space. Due to a common living space often densely populated, marked with minimal facilities, there is a higher chance of transmission of the virus between inmates and into society as they are released.[[55]](#footnote-55) UN High Commissioner Bachelet has also urged all the governments to take urgent measures to protect the health and safety of people in detention and other closed facilities.[[56]](#footnote-56)

Indian prisons are extremely overcrowded – according to the National Crime Records Bureau Report 2018, 1339 prisons housed as many as 4,66,084 prisoners as opposed to their capacity of 3,92,230.[[57]](#footnote-57) The rapid spread of the coronavirus in the prisons has prompted authorities to impose jail lockdowns and release thousands of pretrial detainees on parole.[[58]](#footnote-58) The Supreme Court has directed states and Union Territories to set up a panel to consider the release of prisoners on parole to avoid overcrowding in jails to check the spread of the contagion and prevent closed such closed spaces from becoming a breeding ground of such infection putting at risk the health and safety of several prisoners.[[59]](#footnote-59)

In the state of Maharashtra, authorities have released over 7,200 prisoners by May 2020 to check overcrowding in jails; around 10,000 more are expected to be released on temporary bail or parole.[[60]](#footnote-60) The Uttar Pradesh government declared in May that it would release 11,000 prisoners, including 8,500 undertrials, on personal bonds for eight weeks.[[61]](#footnote-61)

Most prisons administrations of different states have implemented emergency measures such as barring prisoners from meeting anyone from outside, including suspending family visits.[[62]](#footnote-62) Other measures include creating separate quarantine wards,[[63]](#footnote-63) converting empty grounds and stadiums into temporary jails to ensure bare minimum adherence to physical distancing guidelines[[64]](#footnote-64) and increased screening and tracing of prisoners to prevent emergence of clusters of the infection. However, despite measures, prisons have become a hotbed of the disease[[65]](#footnote-65); for example, in Mumbai’s Arthur Road jail, there were 184 COVID-19 cases out of 2500 total inmates.[[66]](#footnote-66) Prisons in many Indian states have now proactively started screening and testing prisoners to prevent a further crisis within the existing pandemic.[[67]](#footnote-67)

* **Human rights defenders, student protestors and political dissidents**

In addition to the impact of the restrictive measures on rights, it also appears that the Government has started a new wave of arrests and detention of human rights defenders, student activists and protestors.[[68]](#footnote-68) The lockdown is likely to be misused to further restrict and suppress any dissent; arrests and detention of activists when the courts are not optimally working mean that they remain in prisons for an uncertain period of time. Some noteworthy cases are that of Safoora Zargar, a student activist who protested against the Citizenship Amendment Act (CAA) and was arrested by the Special Cell of the Delhi Police in cases linked to the violence in North East Delhi during February 2020. She was pregnant at the time of her arrest and is now five months pregnant as she is currently locked up in Tihar Jail. Especially her pregnancy, along with the need for regular medical care and supervision while being lodged in the prison, has made her more vulnerable to contacting COVID-19. Her bail application was rejected thrice.[[69]](#footnote-69) This has also been the case of scholars and activists, Dr. Anand Teltumbde and Gautam Navlakha (both senior citizens), who have been detained under the Unlawful Activities (Prevention) Act in relation to the Bhima Koregaon violence that took place in 2018.[[70]](#footnote-70) 55 journalists have been arrested, booked and threatened for reporting on the COVID-19 situation and as many as 22 First Information Reports being filed.[[71]](#footnote-71)

Although the lockdown in India is now easing, the curtailment of basic freedoms and fundamental rights, especially that of peaceful assembly and association is still a reality affecting a large portion of the population in varying ways. This has also brought put a spotlight on the existing marginalisations and inequities which were caused greater susceptibility to hardships during the lockdown.

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