

FREEDOM OF ASSOCIATION

IN INDIA





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© Labour Campaign for Human Rights

The Labour Campaign for Human Rights is a campaign within the Labour movement that seeks to ensure that human rights remain at the heart of Labour Party policy and practice.

In January 2019 we launched our 'Britain and Her Allies' campaign which seeks to develop a human rights-based foreign policy for the Labour Party. We work with a range of human rights organisations, charities and activist groups to draw attention to human rights violations by countries around the world that the UK has close economic, cultural or historical ties with and to develop policy proposals for the UK government to help end these abuses.

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Overview

Introduction

Freedom of association encompasses both an individual's right to join or leave groups voluntarily and the right of the group in question to take collective action in the interests of its members. Freedom of Association is both an individual right and collective right. It is also protected under articles 20 and 23 of the Universal Declaration of Human Rights¹, under Article 22 of the International Covenant on Civil and Political Rights² and Article 11 under the UK's 1998 Human Rights Act³.

In recent years there has been increasingly violent repression of dissent in India by its government. In particular, this issue has been exemplified by the arbitrary detention and harassment of activists and human rights defenders by the state in relation to their participation in peaceful protests against the Citizenship Amendment Act 2019 (CAA), the National Population Register and the National Register of Citizens, among many other national and international agreements.



Photo of protests in India in 2016 (source: counterview.org)

1 <https://www.un.org/en/universal-declaration-human-rights/>

2 <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

3 <https://www.equalityhumanrights.com/en/human-rights-act/article-11-freedom-of-association-and-assembly>



Recent History

The past five years have featured many instances of India infringing on its citizens' right to freedom of association. Authorities in 2015 intensified a crackdown on civil society by using the Foreign Contribution Regulation Act (FCRA) to persecute organisations that questioned or criticised its Government's policies. The Government cut off funding to 9,000 non-governmental organisations (NGOs) such as Greenpeace India, having suspended the organisation's foreign funding licence and put a freeze on its domestic bank accounts¹. The Government even went as far as preventing Priya Pillai, an activist for Greenpeace, from travelling to London to testify before the UK Parliament's All-Party Parliamentary Group for Tribal Peoples². The reason that was given for preventing Pillai's travel was that she would project the image of the Indian Government 'negatively' at the international level.³



A Hindu mob faces off with a Muslim mob during during Gujarat's 2002 riots. (source: AFP)

1 <https://www.theguardian.com/environment/2015/sep/04/greenpeace-in-india-barred-from-receiving-foreign-funding>
2 <https://www.theguardian.com/environment/2015/jan/12/greenpeace-india-campaigner-prevented-from-travelling-to-the-uk>
3 <https://indiankanoon.org/doc/64486862/?type=print>

Among other major NGOs was the Ford Foundation, which saw its funding frozen for its financial support of activist Teesta Setalvad in 2009. In 2009, Salvad was pursuing legal cases against Prime Minister Narendra Modi which accused him of failing to stop anti-muslim riots that killed at least 1,000 citizens in Gujarat when he was Chief Minister of the State.⁴ In March 2015, the High Court of Delhi ruled that authorities had violated Pillai's rights to freedom of expression and travel. In November 2015, authorities in Tamil Nadu state cancelled Greenpeace India's registration.⁵

Indian authorities also targeted activist Teesta Setalvad and her husband, Javed Anand, in what appeared to be acts of politically motivated intimidation, accusing them of violating the FCRA and receiving funds illegally, among other allegations. In September, the government suspended the registration of their organisation, the Sabrang Trust, under the FCRA, and moved to cancel the Trust's licence. Setalvad has developed a profile for her work supporting victims of the 2002 Gujarat riots and for seeking criminal charges against government officials involved.⁶

In April 2016, Maina Kiai, the then UN Special Rapporteur on the rights to freedom of peaceful assembly and association, analysed the FCRA, which has been continually used by the Modi government to regulate the foreign funding of civil society organisations and sabotage the activities of organisations that question or criticise the government or its policies. In Kiai's analysis, he found that restrictions imposed by the law and its rules were "not in conformity with international law, principles and standards."⁷

Later that year the government temporarily suspended the FCRA status of the Lawyers Collective, an NGO founded in 1981 by Indira Jaising, a former additional solicitor general, and her husband, Anand Grover, a former UN rapporteur on health rights.⁸ The Lawyers Collective provides legal aid, advocates for the rights of marginalised groups, and campaigns to end discrimination against persons from LGBTQ backgrounds in India. The organisation accused the government of trying to weaken it for its activities in assisting citizens in cases against the Modi government's policies.

Subsequently, three UN special rapporteurs released a statement raising concerns over the suspension of Lawyers Collective and calling on the government to repeal the FCRA law.⁹ At the end of 2016, the government refused to renew the FCRA for 25 NGOs, including several prominent human rights groups. Even as authorities were using the FCRA to tighten restrictions on various NGOs, the government amended the law in March to retroactively legalise funding to political parties by foreign entities.¹⁰

In April of 2017, the government revoked the FCRA license of one of India's largest public health advocacy groups, the Public Health Foundation of India (PHFI). The organisation was accused of diverting foreign funds to lobby parliamentarians and media outlets. Although it is stated within the FCRA that it may be revoked if groups violate the procedures it outlines, the government's political motivations became evident after the government's decision was challenged in the

4 <https://uk.reuters.com/article/india-politics-ngo/ford-foundation-funding-dries-up-as-modi-clamps-down-on-ngos-idINKCNOPO15U20150715>

5 <https://www.theguardian.com/world/2015/aug/11/indiast-war-on-greenpeace>

6 <https://www.hrw.org/world-report/2016>

7 <https://counterview.org/2016/04/26/indiast-fcra-restrictions-are-not-in-conformity-with-international-law-principles-and-standards/>

8 <https://indianexpress.com/article/india/india-news-india/indira-jaising-ngo-licence-suspended-fcra-home-ministry-tax-filings-2829436/>

9 <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20112&LangID=1>

10 <https://www.hrw.org/news/2016/11/08/indiast-foreign-funding-law-used-harass-25-groups>



Delhi High Court by the Centre for Promotion of Social Concerns (CPSC). In January 2017 the government produced an affidavit in response accusing the CPSC of using foreign funding to share information with UN special rapporteurs and foreign embassies that portray India's record on human rights in a negative light¹¹.

In 2018, police in Maharashtra state arrested and detained 10 civil rights activists, lawyers, and writers, accusing them of being responsible for the funding and instigation of caste-based violence that took place on 1 January 2018, as well as being members of a banned Maoist organisation. A committee headed by the Deputy Mayor of Pune found that the violence on 1 January was premeditated by Hindu extremist groups, but police were targeting the activists because of pressure from the government to protect the perpetrators.

In June 2020, authorities filed a criminal case against Lawyers Collective for an alleged violation of the FCRA. In a statement in response, the organisation pointed to its record of taking up sensitive cases against the leading figures of the governing Bharatiya Janata Party and the Government of India, including Amit Shah, the present Home Minister, in the Sohrabuddin case.¹² Sohrabuddin Sheikh was a criminal in Gujarat with alleged links to the global terrorist organisation, Lashkar-e-Taiba and the Pakistani intelligence agency, Inter-Services Intelligence. He and his wife were killed in November 2005.¹³ He was alleged to have planned to create communal chaos in Gujarat by assassinating "an important political leader", in the state, who this leader may be has never been revealed but it is thought to possibly have been then Chief Minister of Gujarat, Narendra Modi. In July 2010, India's Central Bureau for Investigation arrested Amit Shah, who was the Minister of State for the Government of Gujarat both at the time of his arrest and in 2005 when Sohrabuddin was murdered, in connection with the case.¹⁴ He was released the following year.

11 <https://amnesty.org.in/news-update/ngo-foreign-funding-law-used-reprisal-tool-government/>

12 <https://www.thehindu.com/news/national/cbi-registers-criminal-case-against-lawyers-collective-names-anand-grover-in-fir/article28051166.ece>

13 <https://archive.is/20130131013520/http://news.outlookindia.com/items.aspx?artid=337770>

14 <https://www.deccanherald.com/national/who-killed-sohrabuddin-711607.html>

1967 Unlawful Activities (Prevention) Act (UAPA)

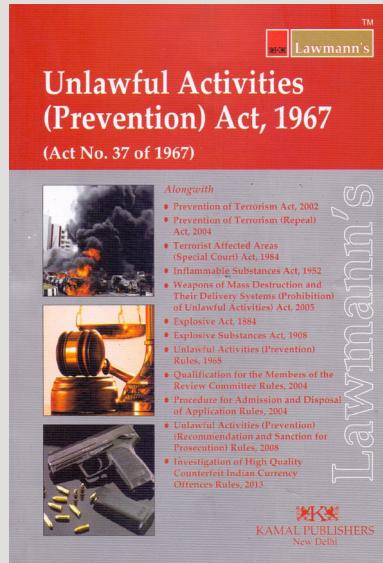
Overview

The 1967 Unlawful Activities (Prevention) Act (UAPA) is an Indian law that is aimed at preventing unlawful activities done in association with outlawed groups in India. The primary objective of the law when it was drafted was to grant the Indian Government powers to address activities that challenge the integrity and sovereignty of India. The purpose of this law, when it was first proposed to the India Parliament, was for it to grant powers to put restrictions on actions directed against the sovereignty and integrity of India.

The restrictions that the law puts in place, are on the following areas:

1. Freedom of Speech and Expression;
2. The Right to Assemble peaceably and without arms; and
3. The Right to Form Associations or Unions.¹

The bill was passed by both the Houses of the Indian Parliament and received the assent of Zakir Husain, the President of India at the time, on 30 December 1967.



Amendments

The UAPA has been amended six times since it received assent in 1967. In August 2019, the federal government passed amendments to the UAPA allowing individuals to be designated by the state as terrorists.² This was despite concerns voiced by human rights groups on how the law already has been misused to target critics of the government and religious minorities. The amendments have been challenged in India's Supreme Court as unconstitutional.³

1 <https://www.latestlaws.com/wp-content/uploads/2014/10/the-unlawful-activities-prevention-act-1967-37-of-1967.pdf>

2 <https://www.indiatoday.in/india/story/individuals-declared-terrorists-president-kovind-assent-uapa-amendments-1579141-2019-08-09>

3 <https://www.hrw.org/world-report/2020/country-chapters/india>



It is the view of many civil rights groups and international human rights observers that the UAPA's 2019 amendment contravenes articles of the International Covenant of Civil and Political Rights. This point was mentioned in communication that the United Nations Special Rapporteurs made with the Indian Government in May 2020 raising their concerns regarding the Act.⁴

Criticism

The UAPA has been the subject of great criticism by human rights groups both within India and internationally. Firstly, the power under section 43E to designate an individual as a terrorist before being proven guilty by trial, has been highlighted as an area of concern in the law.⁵ Another particular concern of the law is the time in which police forces are required to submit a charge sheet, a record made in a police station of the charges made against the accused. Police normally have 60 to 90 days, under general Indian criminal law, to investigate a case and submit a charge sheet, without doing so, the accused individual can obtain bail. However, under the UAPA, the time that the police forces are given before submission of this document is extended to 180 days.⁶

The UAPA also permits the court to presume the guilt of the accused if the prosecution proves possession of arms or fingerprints on materials associated with an act of terror. This is again in contrast with traditional Indian criminal law, where a prosecution must prove all elements of a crime to charge the accused.⁷

The law has been used by the government of India in a variety of cases, some of which have been discussed in this publication, where individuals who happen to have been outspoken against the government have been charged under the UAPA without a fair trial.



Narendra Modi, Prime Minister of India and former Chief Minister of the Indian province of Gujarat (source: www.apbjp.org)

4 <https://www.theleaflet.in/un-special-rapporteurs-express-concerns-over-uapa/#>

5 <https://www.deccanherald.com/national/national-politics/opposition-slams-amendment-to-uapa-call-it-draconian-751479.html>

6 <https://indianexpress.com/article/opinion/columns/bhima-koregoan-uapa-elgaar-parishad-activists-arrest-urban-naxals-the-law-will-not-hold-5413419/>

7 <https://indianexpress.com/article/opinion/columns/bhima-koregoan-uapa-elgaar-parishad-activists-arrest-urban-naxals-the-law-will-not-hold-5413419/>

Case Study 1: Dr Anand Teltumbde

Background

Dr Anand Teltumbde is one of India's foremost intellectuals and a civil rights activist focusing on caste oppression. Teltumbde was a Management Professor at the Goa Institute of Management overseeing its Big Data programme. Throughout his career, he has advocated for the rights of the Dalits, a name given to people in India belonging to the lowest caste, of which Teltumbde belongs himself. Teltumbde has written extensively on caste oppression and has authored 30 books over his academic career.¹



Detainment

On 1 January 2018, violence broke out in Bhima Koregaon, a village in Maharashtra state, during annual celebrations to mark the 200th anniversary of the Battle of Bhima Koregaon which took place between the British East India Company and the Peshwa faction of the Maratha Confederacy, an 18th-century power on the Indian subcontinent.² The violence resulted in the death of a 28-year old man and injuries to five other civilians.³

In August 2018, Teltumbde's house was raided by police who accused him of having a connection to the 2018 Bhima Koregaon violence and in connection with a Maoist plot to assassinate Prime Minister Narendra Modi.⁴ The allegations were denied by Teltumbde who was granted protection from arrest by India's High Court. However, he was arrested by Pune police on 3 February 2019 and was released later that day.⁵ After his release, Teltumbde accused the government of harassment and attempting to criminalise forms of dissent in civil society, describing his experience when he was arrested as 'horrific'.⁶

Teltumbde's response to the actions of the Indian government was joined by an international outcry as over 600 scholars and academics issued a joint statement in solidarity condemning the Indian government's action.⁷ In addition, over 150 organisations and intellectuals signed a letter to António Guterres, UN Secretary-General, calling for the UN to intervene.⁸

On 16 March 2020, the Indian Supreme Court dismissed Teltumbde's plea for anticipatory bail

1 <https://www.bbc.co.uk/news/world-asia-india-53400138>

2 <https://www.thehindu.com/opinion/op-ed/understanding-bhima-koregaon/article22361017ece>

3 <https://www.hindustantimes.com/india-news/violence-in-maharashtra-as-dalits-protest-death-of-28-year-old-in-bhima-koregaon-clashes/story-zerVWqrSjLjF2x53oHMVXL.html>

4 <https://www.thehindu.com/news/national/who-is-anand-teltumbde-and-why-was-he-arrested-recently/article26292219.ece>

5 <https://www.newindianexpress.com/nation/2018/dec/21/koregaon-bhima-case-hc-rejects-civil-rights-activist-anand-teltumbdes-plea-seeking-quashing-of-fir-1914647.html>

6 <https://www.ndtv.com/india-news/it-was-humiliating-activist-anand-teltumbde-on-his-arrest-by-pune-police-1988703>

7 <https://thewire.in/rights/anand-teltumbde-activists-arrested-petition>

8 <https://www.nytimes.com/2019/02/20/world/asia/india-modi-intellectuals-dissent.html>



under the UAPA, giving Teltumbde three weeks to turn himself in. On 8 April 2020, Teltumbde was ordered to surrender to the National Investigation Agency by 14 April. Teltumbde subsequently turned himself in to federal investigators and was charged under the UAPA. Teltumbde is one of 11 activists, poets and lawyers that have been arrested in connection with the violence in Bhima Koregaon.

Imprisonment

Dr Teltumbde's arrest has been condemned widely by public figures and human rights organisations in India. Amnesty International India condemned Teltumbde's imprisonment, demanding his release, along with the other 11 human rights activists that have been jailed in connection to the Bhima Koregaon violence in January 2018.⁹ Historian Romila Thapar, economists Prabhat Patnaik and Devaki Jain, sociologist Satish Deshpande and legal expert Maja Daruwala wrote a letter to S.A. Bobde, Chief Justice of India drawing his attention to the case.¹⁰



Anand Teltumbde and his lawyer, Rohan Nahar outside Pune sessions court in 2019. (source: The Wire India)

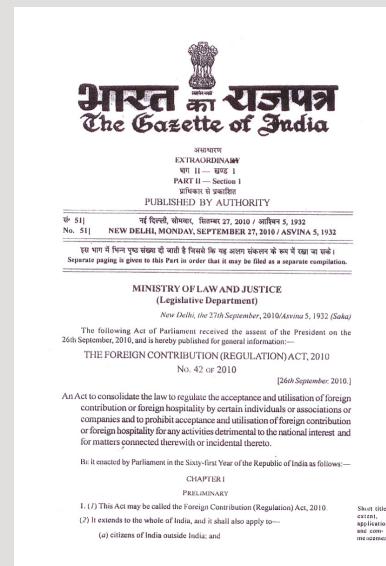
9 <https://www.telegraphindia.com/india/amnesty-call-to-free-bhima-koregaon-activists/cid/1778978>

10 <https://thewire.in/rights/romila-thapar-cji-bobde-gautam-navlakha-anand-teltumbde>

2010 Foreign Contribution Regulation Act (FCRA)

Overview

The Foreign Contribution (regulation) Act, 2010 is an act by the Parliament of India. The act regulates the reception and use of foreign contributions that particular individuals or associations receive. The Act also prohibits the acceptance and utilisation of foreign contribution or foreign hospitality for any activities detrimental to 'India's national interest'.¹ The Act was designed to supersede its predecessor Act of the same name, which received royal assent in 1976.



Amendments

Amit Shah, the Minister of Home Affairs of India introduced a Bill to amend the FCRA in 2020. The bill was aimed at strengthening the transparency and accountability of receiving and utilising the contributions made by foreign stakeholders in the NGO sector. The bill made it mandatory for the office bearer of any NGO to provide their Aadhaar numbers. An Aadhaar number is a 12-digit identity number that can be obtained voluntarily by either Indian residents or passport holders. The bill also granted the government powers to stop the utilisation of foreign funds by an organisation through a 'summary enquiry'.² The Bill unanimously passed both houses of the Indian Parliament in September 2020.

Criticism

The Indian government has been accused of weaponising the FCRA law to marginalise organisations that are outspoken against its policies. Internationally, India has received great criticism for the FCRA and the way that it has been used. In 2017, at the UN Human Rights Council's 'Peer Review', a periodical examination of the human rights performance of UN member states, India faced great questioning over its use of the law, with the US and Germany among other nations describing it as arbitrary.³ Though perhaps the greatest sign of the damage of how FCRA has been deployed was the freezing of Amnesty International's activities in India.

1 https://fcaonline.nic.in/home/PDF_Doc/FC-RegulationAct-2010-C.pdf

2 <https://timesofindia.indiatimes.com/india/lok-sabha-passes-bill-to-amend-foreign-contribution-regulation-act/articleshow/78237069.cms>

3 <https://www.thehindu.com/news/national/us-germany-slam-india-for-new-funding-norms/article18385902.ece>



The widely recognised human rights organisation declared that it would stop the work of its Indian branch in September 2020, citing the FCRA as the Indian government had frozen its bank account.⁴ Amnesty International also noted this action by the Indian government as the latest in a series of actions to harass the organisation starting in October 2018 with raids on its premises.

It is widely understood that Amnesty International, along with the cases of Greenpeace India and the Lawyers Collective, have been wrongly treated by the Indian government for their vocal opposition to many of the actions of the government such as its treatment of citizens in Kashmir and during the Delhi riots of 2020.⁵



Amnesty International India's offices. (source: The New York Times)

4 <https://amnesty.org.in/news-update/amnesty-international-india-halts-its-work-on-upholding-human-rights-in-india-due-to-reprisal-from-government-of-india-2/>

5 <https://www.bbc.com/news/world-asia-india-54277329>

Case Study 2: Dr G.N. Saibaba

Background

G.N. Saibaba is a widely respected academic in India who taught as a professor of English at Delhi University's Ram Lal Anand College, until he was arrested in 2014.

He came to national prominence for rallying against 'Operation Green Hunt', a military operation launched by the Indian government in 2009 to clear Central India's 'Red Corridor', a region in the eastern, central and the southern parts of India that have a history of Maoist insurgency. Saibaba founded the All India Peoples' Representation Forum (AIPRF), a human rights advocacy group, and served as its secretary from 1994 to 1996, during this period he was arrested several times by Andhra Pradesh police.¹ Saibaba's campaigning was to highlight how the operation resulted in the targeting of indigenous groups and the hand over of their land to private corporations.



Saibaba has been wheelchair bound since he was five as a result of Polio and suffers from 19 other medical ailments such as maladies in his gall bladder and pancreas and a cyst in his brain.² It has also been reported that he has issues in his kidneys and spine as a result of requiring treatment which he cannot access while imprisoned.

Detainment

In May 2014, Saibaba was arrested by Maharashtra police for allegedly running a Maoist front and having relationships with rebels in the Chhattisgarh and Maharashtra Indian provinces.³ Saibaba remained in jail until March 2017 when he stood trial in the District and Sessions Court in Gadchiroli, Maharashtra. Saibaba, journalist Prashant Rahi, Jawaharlal Nehru University student, Hem Mishra, tribal farmers from Gadchiroli district, Mahesh Tirki and Pandu Narote, and a tribal labourer from Chhattisgarh, Vijay Tirki, were prosecuted for offences punishable under Sections 13, 18, 20, 38, 39 of the UAPA, with Section 120B of the Indian Penal Code. Saibaba was one of five to be given life imprisonment, Vijay Tirki has received a sentence of 10 years imprisonment.

It was alleged that Saibaba and the five other individuals conspired to wage war against the Government of India and recruit others to join this cause. Allegations also included the destruction of property and destabilising the government. Another charge was for having connections with the Communist Party of India, a Maoist organisation.⁴

1 <https://economictimes.indiatimes.com/news/defence/saibaba-is-believed-to-be-brain-behind-several-attacks-on-police/articleshow/57532509.cms?from=mdr>

2 <https://www.thehindu.com/news/national/five-years-on-no-relief-for-jailed-delhi-university-professor-saibaba/article27084472.ece>

3 <https://economictimes.indiatimes.com/news/defence/saibaba-is-believed-to-be-brain-behind-several-attacks-on-police/articleshow/57532509.cms?from=mdr>

4 <https://www.firstpost.com/india/gn-saibabas-life-imprisonment-sentence-is-a-conspiracy-of-bjp-rss-says-wife-vasantha-kumari-3321084.html>



Saibaba's family and his lawyer were outspoken after the ruling as they were expecting him to be acquitted and were deeply frustrated by the lack of transparency in the proceedings along with a lack of evidence to convict Saibaba on a life sentence. To date Saibaba remains incarcerated under the UAPA in a solitary confinement cell in Nagpur Central Prison.⁵

Imprisonment

The conditions throughout Saibaba's time in prison have been very poor, in particular, he has experienced a dire lack of medical support.⁶ Saibaba relies on prescribed daily medications but has struggled to access them at times due to them being confiscated by prison authorities. His family have said that his arms are becoming more paralysed because of irregular medical



Nagpur Central Jail, where Dr Saibaba has been imprisoned (source: www.timesofindia.indiatimes.com)

treatment by jail authorities.⁷ In April 2019, a panel of experts with the UN Office of the High Commissioner of Human Rights (OHCHR) wrote to the Indian government urging authorities to immediately release Saibaba, citing his 'seriously deteriorating' health condition.⁸

In 2020, after the COVID-19 pandemic hit India, the Indian Supreme Court and several high courts granted a great number of inmates bail or parole to decongest the prison system. Mindful of this, Saibaba's lawyer, pleaded with the Bombay High Court to grant him bail, or suspend his sentence temporarily. In response the Maharashtra government said that Saibaba's chances of contracting COVID-19 were minimal due to the high security zone he is detained in inside the jail and that he is more likely to contract COVID-19 on bail in Delhi, where he lived before his arrest. The court agreed with this statement and therefore the request was denied.⁹

5 <https://www.thehindu.com/news/national/five-years-on-no-relief-for-jailed-delhi-university-professor-saibaba/article27084472.ece>

6 <https://scroll.in/article/880290/why-is-gn-saibaba-being-denied-adequate-medical-care-and-a-life-of-dignity-in-prison>

7 <https://www.telegraphindia.com/india/g-n-saibaba-fast-threat-for-books/cid/1794959>

8 <https://www.thehindu.com/news/national/five-years-on-no-relief-for-jailed-delhi-university-professor-saibaba/article27084472.ece>

9 <https://www.news Laundry.com/2020/08/17/gn-saibaba-isnt-being-let-out-of-prison-even-in-a-pandemic-its-a-disgrace>

Recommendations

The following are recommendations that we would make to the Indian Government to ensure that its citizens freedom of association is protected, and to repair its record on protecting this freedom. These recommendations are also for the UK Government in their interactions with the Government of India and for the Labour Party in their advocacy on this issue in what the UK Government should raise with the Government of India:

- To ensure that restrictions on organisations, such as those that can be made under the FCRA, are in accordance with the right to freedom of association as mandated under international law. Implementing a fair review process by which groups designated as “terrorist organizations” can challenge the basis of this classification in front of an independent court.
- To ensure prompt judicial reviews and the possibility of bail for persons arrested and detained on the allegation of membership of a terrorist organisation.
- To repeal provisions under the UAPA authorising up to 180 days of pre-charge detention in judicial custody.
- Repeal the prohibition on bail under section 43D(5) of the UAPA.
- Setup a regular review of the UAPA and its human rights implications with a relevant committee of the Indian Parliament.
- Revise the definition of terrorism as stated within the UAPA, ensuring that it is consistent with the recommendations of the UN special rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism.



