

India: A List of Activists, Scholars and Scribes Whose Personal Liberty Remains at Judiciary's Mercy

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New Delhi/Mumbai: On September 7, following sustained interrogation at the National Investigation Agency's office in Mumbai, [two activists of the Kabir Kala Manch](#) - Sagar Gorkhe and Ramesh Gaichor - [were arrested](#) for alleged connections to the 2018 Elgar Parishad case.

Days later, another young cultural activist of the group, Jyoti Jagtap, was arrested too. All three were part of the January 2018 FIR originally registered by Pune police. They were accused of being the 'primary organisers' of Bhima Koregaon Shaurya Din Prerna Abhiyaan, which had put together the Elgar Parishad event on December 31, 2017.

In the past two years, the Pune police and later the NIA have arrested over a dozen activists and lawyers, most of whom were not even named in the FIR. But these three had curiously been spared.

When Gorkhe, Gaichor and Jagtap were arrested, their lawyers had questioned why their physical custody was needed in a two- year old case. They said the arrests were a political move, made with "malafide intentions". A bail application was promptly moved.

The delay in the arrest - even though they had been named as accused in the 2018 FIR - and then their sudden arrest two years later is comparable with what unfolded in Republic TV editor-in-chief Arnab Goswami's case. Goswami was held over a 2018 abetment-to-suicide charge.

The treatment meted to the two in the hands of the judiciary was starkly different. While Goswami's case was listed for urgent hearing right up to the apex court and he was released on bail within six days, the Kabir Kala Manch activists have been struggling to get a single proper hearing before the Bombay high court.

The activists are not an exception, delay in judicial hearings is a common phenomenon plaguing the Indian criminal justice system.

The Wire has put together a list of cases where activists and journalists arrested in the past years have struggled either in securing regular hearings, or in having their basic human rights protected, or both. Their situations put the Supreme Court's assertion on ["personal liberty" during Goswami's bail hearing](#) in harsh perspective.

Jamia alumni and student leaders

Meeran Haider, a PhD student at the Jamia Millia Islamia University was arrested on April 1 for allegedly conspiring to incite large-scale communal violence in Delhi in February. He was also the president of the Delhi unit of the Rashtriya Janata Dal youth wing. He was vocal in the Jamia Coordination Committee, a group comprising Jamia students and former students, made in the aftermath of the passing of the Citizenship Amendment Act.

Asif Iqbal Tanha, a third year undergraduate Persian language student at the Jamia Millia Islamia University, was arrested on May 16 by the Delhi police crime branch and booked in the case related to the Jamia violence of December 15, 2019 and the northeast Delhi violence in February. He has been associated with Students Islamic Organisation and was part of the anti-CAA struggle in the university that started in December last year.

Shifa Ur Rehman, president of the Jamia Millia Islamia Alumni Association was arrested on April 26 by the special cell of Delhi Police, for alleged involvement in the orchestration of the northeast Delhi riots in February.

According to police, Rehman along with members of the Alumni Association of Jamia Millia Islamia and Jamia Co-ordination Committee had visited various protest sites in Delhi.

All three have been charged under the Unlawful Activities (Prevention) Act.

On October 27, Tanha's bail plea was rejected for a second time by a court in Delhi. Tanha is among the 15 people named in FIR 59/2020 filed by the Delhi Police in the riots conspiracy case that charged several student leaders and activists with UAPA.

During the hearing, Tanha's lawyer Siddharth Aggarwal had said, "The applicant [Tanha] was not even present in North-East Delhi during the unfortunate events of February 2020..."

Haider remains in detention awaiting further investigation.

In a court hearing on November 3, Haider told Additional Sessions Judge Amitabh Rawat that he was "out of clothes," that he had no warm clothes and medicine in jail.

On September 15, the Delhi high court while hearing a petition by Shifa Ur Rehman regarding the extended time period granted to Delhi Police's Special Cell for probe into the UAPA case registered against him and others, had pulled up Tihar jail authorities and asked them to substantiate their statement that Rehman had "declined" to attend a video meeting with his lawyer and that opportunities were provided to him or his counsel for the purpose.

"In this country, you cannot simply pick somebody and put him in jail and tell him that you cannot meet even your lawyer," Justice Vibhu Bakhru had said. Despite a lower court order in July that asked authorities to consider the prayer for arranging a meeting between Rehman and his counsel, Rehman's lawyer, Amit Bhalla allegedly could not meet him. Bhalla told the court that jail authorities were not taking steps to organise the video meet despite repeated emails.

On November 9, the Delhi high court directed police to respond to a plea filed by Rehman challenging the sanctions granted to prosecute him under the anti-terror law. Justice Yogesh Khanna asked the state government to file a status report within four weeks and listed the matter for hearing on January 12.

JNU student leaders

Jawaharlal Nehru University student activist **Umar Khalid**, one of the main accused in the Delhi

riots case, was arrested on 13 September. FIR 59 had named him as the main conspirator behind the Delhi riots and had charged him with UAPA along with other charges of rioting and criminal conspiracy.

On September 21, a Delhi court had dismissed an application by Khalid seeking permission to meet his family during police custody. A second FIR was also registered against him with the Crime Branch on October 1.

Founding members of the women's student collective Pinjra Tod and research scholars at JNU, **Natasha Narwal** and **Devangana Kalita** were arrested on May 23 by Delhi Police in connection with a protest against the CAA in Jaffrabad area in February. A day later they were granted bail in the matter by a court in Delhi. Immediately after the court's order, the Delhi Police moved an application to interrogate the two activists and arrested them in a separate case related to the violence.

Charged with attempt to murder, rioting and criminal conspiracy, Narwal and Kalita were booked under UAPA too.

On September 1, the high court granted bail to Kalita in one of the four cases filed against her, saying police failed to show evidence of her instigating women of a particular community or giving hate speeches. However, Delhi Police challenged the bail in the Supreme Court.

On October 28, the Supreme Court dismissed Delhi Police's assertion that Kalita is an influential person who can tamper with evidence and dismissed its appeal against her bail. Despite this, Kalita continues to remain in jail in connection with another FIR lodged against her under the UAPA.

On September 17, Delhi's trial court in Karkardooma granted bail to Narwal in one case against her. Narwal remains in Tihar jail, for an FIR filed against her under the stringent UAPA.

Sharjeel Imam, a research scholar at JNU was arrested from his hometown, Bihar's Jehenabad, on January 28 over alleged inflammatory speeches made during CAA protests. Several police cases were registered against Sharjeel Imam after a video of him allegedly making 'anti-national' comments was widely circulated online. A sedition case was registered against him in Delhi for his alleged call for a *chakka jam*. He is also wanted in Assam, Manipur, Arunachal Pradesh and Uttar Pradesh. Charges under several sections of the IPC notwithstanding, the UAPA was also invoked against him.

On the 88th day of his custody, an application to extend time for the probe was filed under Section 43D of the UAPA, thereby depriving him of the right to access statutory bail which is granted after 90 days of custody as per Section 167(2) of the Code of Criminal Procedure. In light of the above, Imam's plea for default bail under Section 167 of CrPC was rejected by the trial court and time was given to the Delhi Police to investigate under UAPA.

On 10 July, the Delhi high court rejected the plea moved by Imam challenging extension of 3 months. Imam will have completed 289 days in jail on November 13.

Journalists

Siddique Kappan, the Delhi correspondent for the Azhimukham news portal was arrested from Mathura on October 6, while on his way to Hathras, where the brutality perpetrated on a 19-year-old Dalit woman by four 'upper' caste men had caused her death.

The UP Police accused him of being involved with Popular Front of India. His family claimed

otherwise. He was booked under UAPA and several sections of the IPC and Information Technology Act. He was later named in the Hathras 'conspiracy' case.

His wife has alleged that she has not been allowed to speak to him or enquire about his health condition. She also said that all attempts to meet him, even by the family lawyer, have been denied by the Uttar Pradesh police.

After Arnab Goswami was given bail, the Kerala Union of Working Journalists (KUWJ) had filed an application in the Supreme Court, seeking directions to urgently hear Kappan's bail petition.

The case has been listed for hearing by the Supreme Court on November 16.

Aasif Sultan, a journalist with the monthly magazine *Kashmir Narrator* who wrote an article on the popular militant commander Burhan Wani, whose death set off a wave of anti-government demonstrations in Kashmir in July 2016, was arrested on August 31, 2018 on charges of providing logistical support to a banned militant organisation. He has been in jail ever since.

According to a [report](#), he was denied bail by a lower court in Srinagar in November, 2018. In February 2019, police filed a charge sheet accusing him of harbouring militants.

The journalist has now spent over 805 days in prison, most of it in Srinagar Central Jail. A group of his friends and supporters continue to run a campaign with the hashtag #FreeAasifSultan.

The Meghalaya high court, on November 10, refused to quash a criminal case lodged against journalist **Patricia Mukhim**, for her Facebook post on the continued attacks on non-tribals in the state.

In her post, Mukhim had pointed at a skirmish that occurred at Lawsohtun at the Basketball Court between tribal and non-tribal community youth and noted that those involved in the attack have not been arrested.

While rejecting Mukhim's application, Justice W. Diengdoh observed that the post sought to create a "divide" to the cordial relationship between the tribal and non-tribal in Meghalaya.

This is not the first time that Mukhim has had a criminal proceeding initiated against her. Last year, the high court had found her in contempt for her article on *Shillong Times* in which she had criticised the series of orders passed in *suo motu* proceedings for enhancing the retirement benefits of judges. The order was later [stayed by the Supreme Court](#).

Elgar Parishad case

Within months after the NIA took over the Elgar Parishad case in January this year, **Gautam Navlakha**, a Delhi-based journalist and human rights activist and **Anand Teltumbde**, an academic and civil liberties activist were arrested. Navlakha's lawyers Yug Choudhary and Ragini Ahuja, in August, moved the Bombay high court seeking bail.

Circulation, one of the important court formalities that is required to get the case before the court, was sought on four different occasions. Navlakha's lawyers have even written to the court's registry and sent several reminders to get the matter listed for hearing. The lawyers in their reminders have pointed out that the matter pertains to a "personal liberty of a senior citizen" (Navlakha is 67).

When the petition was finally listed, it was so low on the board that the case never came up for hearing.

Stan Swamy, an 83-year-old Jesuit priest and tribal rights activist based in Jharkhand was the 16th person to be arrested in Elgar Parishad case. Suffering from several age-related issues including Parkinson's, Swamy had a trouble even signing his legal papers. His lawyer Sharif Shaikh had instantly moved seeking interim bail citing his health condition, age and the prevailing COVID-19 outbreak in Maharashtra's prisons. His application was rejected.

Last week, his lawyers had to again move court [seeking permission to use a straw and sipper in prison to drink water](#), as he cannot hold a glass because of Parkinson's disease. The NIA sought a good 20 days to respond on Swamy's plea.

The investigating agency has claimed that all 16 arrested persons, including Swamy, are "urban Naxals" and have been involved with the banned CPI (Maoist) organisation.

For 79-year-old poet and rights activist **Varavara Rao** too, it has been a struggle to avail himself of essential medical care while in jail. Rao, who was arrested in August 2018 has been suffering, more so since the outbreak of COVID-19. His bail applications, filed both on merit and his health conditions have been rejected time and again.

In the past six months, he has been in and out of hospital, needing extensive medical care. His family has accused the prison department and NIA of not providing adequate attention and denying him right to dignity. On November 12, while arguing his case, senior advocate Indira Jaising told the court that she was afraid that Rao would lose his life if he continued to be in jail. "He suffers from a neurological condition, he is bedridden, his catheter is not changed for more than 40 days. Do you think a man bedridden can flee?" Jaising argued before the court.

Advocate Nihalsing Rathod, who is appearing for several activists arrested in the case, told *The Wire* that several bail applications were moved between end of last year and early this year. "These applications were made from time to time invoking a range of grounds. But no urgency was shown in dealing with these applications," he says. Rathod has also challenged he transfer of case to the NIA, that application too is pending in the court.

Former councillors

Ishrat Jahan was arrested on February 26, accused of attempt to murder in a case related to violence and rioting in northeast Delhi over the amended citizenship law. She was charged with several sections of the IPC and was also booked under UAPA. Advocate Zakir Raza, appearing for Jahan had said that there was a peaceful protest against the CAA for 49 days, no complaint of any criminal activity had been moved against the protesters and that she has been arrested out of "political vendetta" due to her affiliations with the Congress.

In a hearing on November 3, Sarwar Jahan, co-counsel for her sister Ishrat said that Jail No. 16 inside Mandoli Jail had been quarantined because five inmates were showing symptoms. Her family's request to give her a warm tracksuit was denied. "We went there but family members were not allowed to meet her," she said. "Please pass a general order so that we can give warm clothing to them."

Jahan's family said she had been tortured while in custody.

Jahan was released on June 12, on interim bail, for her wedding. Advocate Lalit Valecha, appearing for her, had told the court that investigation has already been completed, so she can no longer be required to remain in judicial custody. The judge refused to extend her interim bail, even after having been told that her husband had come in contact with a COVID-19 positive patient. She

remains in jail.

Tahir Hussain, former Aam Aadmi Party councillor from Nehru Vihar was arrested on March 5 in connection with the murder of Intelligence Bureau staffer Ankit Sharma in northeast Delhi. The complaint was filed by Sharma's father, following which a case was registered.

On October 22, a Delhi court had dismissed his bail application in three cases observing that he was a sitting AAP councillor at the time of the riots and "used his muscle power and political clout to act as a kingpin in planning, instigating and fanning the flames of communal conflagration".

Tahir's lawyer, senior advocate K.K. Manan, had argued that Tahir "has been caught in a political cross-fire and the allegations levelled against him were nothing but a political blame game to malign his image". Manan further argued, "There is no evidence by way of even a single video or CCTV footage to prove the applicant had participated in the riots or caused damage to property."

Hussain had, in interviews before his arrest, said that he was a riot "victim" and not an accused.

Later, he was also accused of money laundering and funding of anti-CAA protests by the Enforcement Directorate (ED) under the provisions of the Prevention of Money Laundering Act (PMLA), 2002, based on multiple FIRs registered by Crime Branch and Dayalpur Police Station.

The *Wall Street Journal* [had quoted Ankit Sharma's brother](#) as having said that he had been killed by Hindu rioters, presumably in a case of mistaken identity: "Mr. Sharma was returning home when a group of rioters started throwing stones and charged into the street near where his house is located," his brother said.

"They came armed with stones, rods, knives and even swords; they shouted 'Jai Shri Ram' [Glory to Lord Ram]; some even wore helmets," Ankur Sharma told the paper in a telephone interview.

"They started throwing stones and bricks at residents, who rushed to Ankit to help them....Later, his body was found in a ditch."

One day later, the brother denied having spoken to the newspaper and instead blamed Tahir. But the *Wall Street Journal* said it stands by its story.

Tahir remains in jail.

Activists

Twenty-eight-year-old **Gulfisha Fatima**, a Delhi University alumna and MBA graduate was arrested on the basis of an FIR on the Jaffrabad anti-CAA sit-in on April 9. She was charged under several sections of the IPC and slapped with the UAPA on April 18. In a hearing, her lawyer Mahmood Pracha had said that she had been a regular at the protest and was being targeted to scare Muslim women away.

In a hearing on September 21, Fatima had said that she was facing "mental and emotional harassment" by jail authorities. She had also alleged that communal slurs were being used against her. She told Additional Sessions Judge Amitabh Rawat, "They call me 'educated terrorist.' They tell me, 'you die inside, outside you have orchestrated riots.'"

Tihar jail authorities, in response, had said that she was aggressive and had been "punished thrice for her behaviour."

On October 21, ASJ Rawat dismissed her application seeking statutory bail. Gulfisha's application states that she was arrested on April 11 and had been in custody for 183 days as on October 12, when the application was filed. Since no charge sheet had been filed against her within the mandatory 90 days period, she should have been released on bail under Section 167(2) of the CrPC.

An earlier bail plea in August was also dismissed by the court.

The Delhi Police Crime Branch had arrested **Khalid Saifi** in connection with riots that broke out in the national capital's Chand Bagh area in February. He was a member of the organisation United Against Hate. He had been charged in multiple cases and an UAPA charge has been slapped against him.

Khalid's lawyer, senior advocate Rebecca John, had alleged that he had been "brutally beaten inside the [Jagatpuri] police station" at Khalid's bail hearing on March 21, but Additional Sessions Judge Manjusha Wadhwa had denied him bail.

On September 11, a court in Delhi granted bail to Saifi in one case against him. Saifi had applied for bail in this case for the first time on March 18, and the second time on July 17.

Recently, while granting him bail in another case registered against him, Additional Sessions Judge Vinod Yadav observed that Delhi police's method of chargesheeting Saifi over insignificant material displayed "total non-application of mind by the police, which" went "to the extent of vindictiveness."

Both Fatima and Saifi remain in jail.

In December last year, during the height of the anti-CAA protests in Assam and other parts of the country, **Akhil Gogoi**, the leader of the Krishak Mukti Sangram Samiti (KMSS), was arrested. He was perhaps among the first activists to be arrested. The state claimed his arrest was a "preventive measure" in view of the deteriorating law and order situation and his three associates—Dhaijya Konwar, Bittu Sonowal and Manash Konwar—were taken into custody the next day. All three were arrested by the NIA under the Unlawful Activities (Prevention) Act for 'waging war' against the nation and eventually released in July.

Nearly a year later and with at least 12 cases—some of them are from the past—registered against him, Gogoi continues to be in jail. He has been granted bail in three cases filed by the Chabua police station for his "involvement" in anti-CAA protests. Over the past months, the NIA took over two cases in which he is alleged to have "Maoist links".

Besides UAPA, Gogoi and his associates are booked under several sections of the IPC for unlawful assembly, imputations, assertions prejudicial to national-integration and sections of the Prevention of Damage to Public Property, Act (PDPPA).

In July, when the COVID-19 infection broke out in most prisons of India, Gogoi fell ill. After a lot of pressure on the state, the prison department was forced to get his tests done. Gogoi had tested positive.

Only two people charged under UAPA have been granted bail in the Delhi riots cases so far. Safoora Zargar, a student at the Jamia Millia Islamia University, who was pregnant when she was arrested amid the pandemic, and Faizan Khan, a salesman of mobile phone SIMs against whom the Delhi high court did not find any prima facie evidence.

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