

## EXAMINING THE BHIMA KOREGAON CASE: AN ANALYSIS OF THE LEGAL FRAMEWORK, EVIDENCE, AND IMPLICATION FOR CIVIL LIBERTIES

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### ABSTRACT

*The Bhima Koregaon case refers to the arrests of several human rights activists and lawyers in India in 2018 for their alleged involvement in inciting violence during the Bhima Koregaon incident 2018. The Bhima Koregaon incident was a violent clash between Dalits (a historically marginalized community in India) and upper-caste groups in Maharashtra. The activists were accused of having links with Maoist organizations and were charged under the stringent Unlawful Activities (Prevention) Act, 1967 (UAPA), which allows for prolonged detention without bail and has been criticized for its potential for misuse. The case has been controversial, with many civil society groups and human rights organizations alleging that the arrests were politically motivated and an attempt to silence dissenting voices. The case has also drawn international attention, with several UN experts expressing concern about the treatment of the activists and the potential for human rights violations in the case.*

**Keywords:** Bhima Koregaon case, Human rights activists, Unlawful Activities (Prevention) Act, 1967, Human rights violations.

### INTRODUCTION

The [Bhima Koregaon](#) case<sup>1</sup> relates to a contentious event that occurred on January 1, 2018, near Pune, Maharashtra. During the commemoration of the 200th anniversary of the [Battle of Bhima Koregaon](#), which is revered by the Dalit community as an emblem of their defiance against caste-based discrimination, violence broke out. The occurrence resulted in the loss of life of an individual, Rahul Phatangale, 28, who died after being struck in the head by stones<sup>2</sup> and sparked extensive demonstrations and the detention of numerous human rights advocates

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<sup>1</sup> *State of Maharashtra v Surendra Gadling & Ors* [2019] INSC 504

<sup>2</sup> “Violence in Maharashtra as Dalits Protest Death of 28-Year-Old in Bhima Koregaon Clashes, Bandh Called in State” (*Hindustan Times* January 2, 2018) <<https://www.hindustantimes.com/india-news/violence-in-maharashtra-as-dalits-protest-death-of-28-year-old-in-bhima-koregaon-clashes/story-zerVWqrSjLjF2x53oHmVXL.html>> accessed February 28, 2023

and intellectuals. Surendra Gadling, Sudhir Dhawale, Rona Wilson, Shoma Sen, and Mahesh Raut were arrested by Pune Police on 8th June 2018 for allegedly inciting riots and having connections with the Maoist group. On 28th August 2018, Pune Police conducted searches of nine human rights activists and detained five of them, including Varavara Rao, Sudha Bharadwaj, Arun Ferreira, Gautam Navlakha, and Vernon Gonsalves. The Supreme Court ordered them to be placed under house arrest until 17th September 2018, which was later extended until 28th September 2018. However, the Supreme Court denied the appointment of a special investigation team. Arun Ferreira and Vernon Gonsalves were arrested on 26th October 2018, and Sudha Bharadwaj was taken into custody the next day. Activist Varavara Rao was arrested by Pune police on the night of 17th November 2018. The police alleged that all the arrested activists were connected to the Maoist group. Varavara Rao was granted bail on medical grounds by the Supreme Court on 10th August 2022. About a week after Rao's arrest, the police pressed charges against 10 individuals, including five activists advocating for human rights. The chargesheet alleged that the banned CPI (Maoist) had orchestrated the December 31 gathering to rally Dalit groups and other organizations against the ruling establishment. According to the charge sheet, inflammatory speeches made at the event incited the masses and contributed to the escalation of violence in Bhima Koregaon on January 1, 2018. On April 14, 2020, which marked the 129th birth anniversary of Dr. Ambedkar, Anand Teltumbde, his grandson-in-law, was taken into custody by the NIA concerning the case. Then, on October 9, 2020, the NIA apprehended 83-year-old Stan Swamy, who was accused of being involved in the same case. According to the NIA, the Persecuted Prisoners Solidarity Committee (PPSC) - which was co-led by Swamy and Sudha Bharadwaj - was merely a front for Maoists.<sup>3</sup>

The case has been the subject of scrutiny since then and has engendered extensive deliberation in the country. Freedom of speech for activists is an important part of a healthy society, the expression to criticize and scrutinize the government and spread awareness in this regard is one of the integral pillars of democracy to exist. Indian constitution and law guarantee [a speedy trial](#)<sup>45</sup>, it also guarantees each side to be heard, yet in practice, this seems to be biased and unfair. Law is supposed to be followed, and authorities are supposed to set

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<sup>3</sup> "2018 Bhima Koregaon Violence" (*Wikipedia* January 19, 2023)

<[https://en.wikipedia.org/wiki/2018\\_Bhima\\_Koregaon\\_violence](https://en.wikipedia.org/wiki/2018_Bhima_Koregaon_violence)> accessed February 28, 2023

<sup>4</sup> "Speedy Trial" (*Wikipedia* February 25, 2023) <[https://en.wikipedia.org/wiki/Speedy\\_trial](https://en.wikipedia.org/wiki/Speedy_trial)> accessed February 28, 2023

<sup>5</sup> Constitution of India, 1950, art 39A

an example for citizens, but there are recorded cases where officials themselves are placed in a seriously dubious place when their prejudice interferes. A trial is something every accused deserves, and even if found guilty, the prisoner is entitled to be treated with care in prisons too. Yet the atrocity towards activists in jail continues, unfairness in trials and obscuring the evidence from the public are still happening. Such an example is seen in the Bhima Koregaon case, in which many activists, get their basic rights either too late or don't get them at all. Either they suffer in jail because of the officials or they face death too. A case like this cannot be ignored as it accentuates distrust towards authority because of their vicious treatment of dissenters.

### **FACTS OF THE CASE**

On January 1, 1818, Dalit dominated British Army was successful in triumphing over Peshwa Army commanded by Peshwa Bajirao II the battle won a customary stature for Dalits. The victory is exalted by Mahar's, a Dalit community that has faced atrocities and injustice by the Peshwas. A pillar, called the Vijay Stambh (victory pillar), was established by the East India Company to commemorate those who fought for them in the battle. Every year on the same day, January 1, large crowds meet to celebrate and honor their ancestral win. On January 1, 2018, something dark and vicious happened instead, a riot broke out. Many people were arrested for instigating violence and spreading communist propaganda.<sup>6</sup>

The 200th year of the battle was commemorated in 2018. Therefore, there was a more extensive gathering at Bhima Koregaon in contrast to the preceding years. Dalit groups, during the festival, faced violent conflicts with Maratha groups, which led to many people suffering injuries and death. The fire of this hateful riot was originally sparked on December 29, 2017, when Govind Gopal Mahar's memorial had been found in ruins. Elgar Parishad, a prominent public conference organized by Dalit and Bahujan groups, took this topic for conversation on December 31, 2017. Police believe they've passed comments inciting hate crimes.<sup>6</sup>

Reports have also attributed that the entry of some groups bearing saffron flags has caused the vicious riot to break. Police probe into the episode led to the imprisonment of several activists whom they alleged had "[Maoist links](#)". Police believed they've funded Elgar Parishad whose words erupted in riots.<sup>6</sup>

Blame landed on [Kabir Kala Manch \(KKM\)](#) - who allegedly had connections according to FIR filed on the clash. The Pune police had filed a case against Hindutva leader Milind Ekbote and another right-wing leader Sambhaji Bhide.<sup>6</sup>

The [National Investigation Agency \(NIA\)](#) took the case from the Pune police without any sort of consent approved by the state government. Following that, the Maharashtra State Government decided to form a Special Investigation Team to look into the situation.<sup>6</sup>

In chain order, soon many activists had been jailed. In June 2018, Sudhir Dhawale, Surendra Gadling, Mahesh Raut, Shoma Sen, and Rona Wilson were arrested. Soon, Arun Ferreira, Sudha Bharadwaj, Varavara Rao, and Vernon Gonsalves were detained. The National Investigation Agency took over the case earlier this year in January. It went on to arrest academicians Anand Teltumbde and Gautam Navlakha on April 14, 2020. In July, Hanyabu Tharayil was detained.<sup>6</sup>

**All of them have been charged under provisions of the anti-terror law Unlawful Activities (Prevention) Act, 1967 (UAPA) and Indian Penal Code (IPC), 1860 sections:**

1. [153 A](#) (promoting enmity between groups)<sup>6</sup>
2. [505 \(1\)\(b\)](#) (with intent to cause, or which is likely to cause fear or alarm to the public)<sup>7</sup>
3. [117](#) (abetting commission of an offense by the public or by more than ten persons)<sup>8</sup>

**They have also been charged under:**

1. Section [13](#) (unlawful activities),<sup>9</sup>
2. Section [16](#) (terrorist act),<sup>10</sup>
3. Section [18](#) (conspiracy),<sup>11</sup>
4. Section [18B](#) (recruiting of any person or persons for the terrorist act),<sup>12</sup>

<sup>6</sup> Indian Penal Code, 1860, s 153A

<sup>7</sup> Indian Penal Code, 1860, s 505(1)(b)

<sup>8</sup> Indian Penal Code, 1860, s 117

<sup>9</sup> Unlawful Activities (Prevention) Act, 1967, s 13

<sup>10</sup> Terrorism Act 2000, s 16

<sup>11</sup> Unlawful Activities (Prevention) Act, 1967, s 18

5. Section [20](#) ( Punishment for being a member of a terrorist gang or organization)<sup>13</sup> and
6. Section [39](#) (offense relating to support given to a terrorist organization) of the UAPA.<sup>1415</sup>

Investigating Officer Shivaji Pawar has faced blame for corrupt and malicious investigation. Police broke into the homes of Surendra Gadling and Rona Wilson and Sudhir Dhawale in Delhi and Mumbai on April 17, 2018, without an authorized search warrant and yet confiscated many belongings. Home of poet Varvara Rao, Sudha Bharadwaj, Vernon Gonsalves, and Gautam Navlakha was also raided without any legal permission by the forces.<sup>16</sup>

Unlawful Activities and Prevention Act cases are supposed to be heard by a special court or regular court in absence of a special court. Shockingly, the session court took the case in this scenario. The charge sheet is yet even after years, still not complete. More than 60% of "clone copies" of evidence haven't been shared yet. *"It has been nearly five years now but 60% of the clone copies, which form crucial evidence collected by the prosecuting agencies against the accused, haven't been shared with them,"* says advocate Barun Kumar appearing for some of the accused in the case. He added, *"A direction was given by the special NIA [National Investigation Agency] court to the central agency in May 2022 to provide all the clone copies [to the accused] and despite that only 40% has been shared."*<sup>17</sup>

Stan Swamy was arrested for links to Maoists that he continuously denied and claimed he's been fabricated just like other activists. He suffered from Parkinson's disease, and his request for bail on medical grounds has not successfully gained consent from the court. Plastic drinking beaker with a spout or straw – which he needed to drink water because of hand tremors caused by Parkinson's was constantly denied to him by jail authorities. His death was something he was already certain about in his statements. December 11, 2022 – A Arsenal

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<sup>12</sup> Unlawful Activities (Prevention) Act, 1967, s 18B

<sup>13</sup> Unlawful Activities (Prevention) Act, 1967, s 20

<sup>14</sup> Unlawful Activities (Prevention) Act, 1967, s 39

<sup>15</sup> - RG and others, "All You Need to Know about Bhima Koregaon Case" (*iPleaders* December 9, 2021) <<https://blog.ipleaders.in/all-you-need-to-know-about-bhima-koregaon-case/>> accessed February 23, 2023.

<sup>16</sup> Goyal P, "Bhima Koregaon Case: Three Years of Legal and Rights Violations" (*NewsLaundry*) <<https://www.newsLaundry.com/2021/01/02/bhima-koregaon-case-three-years-of-legal-and-rights-violations>> accessed February 23, 2023.

Consultancy report showed that all the evidence NIA relied upon on Fr. Stan's computer was planted. Police have alleged several violations like those discussed above.<sup>17</sup>

## LEGAL ISSUES

- (a) Are the arrests arbitrary and made in bad faith, given that none of the individuals was mentioned in the First Information Report and there is no evidence of their presence at the Bhima Koregaon location?
- (b) Do these arrests under the UAPA hinder the exercise of freedom of speech, which is guaranteed by Article 19, and have a chilling effect?
- (c) Does the use of the UAPA, an anti-terror law, against citizens who have no history of violence, violate the essential principle of the 'Rule of Law'?
- (d) Have the Police infringed upon the fundamental rights of the activists under Articles 14 and 21 by making these arrests through the Unlawful Activities Prevention Act?

## OBSERVATIONS OF SUPREME COURT

Initially, the Pune Police investigated a case in which various activists and human rights defenders were arrested and charged under different sections of the [Indian Penal Code \(IPC\), 1860](#)<sup>18</sup>, and the [Unlawful Activities \(Prevention\) Act, 1967 \(UAPA\)](#)<sup>19</sup>. Among the accused were academics, lawyers, activists, and writers, known for their work on human rights, social justice, and dissent. In January 2020, the case was transferred to the National Investigation Agency (NIA), citing the gravity of the offenses and the involvement of a banned organization, which continued the investigation and filed a charge sheet in October 2020. The charge sheet accused 16 people, including nine activists who were previously arrested by the Pune Police, with various offenses, including conspiracy to wage war against the Indian state, spreading propaganda, and supporting a banned organization. However, in September 2020,

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<sup>17</sup> Saigal S, "5 Years on, Bhima Koregaon Violence Accused Yet to Get 60% of Clone Copies" (*The Hindu* December 31, 2022) <<https://www.thehindu.com/news/national/other-states/5-years-on-bhima-koregaon-violence-accused-yet-to-get-60-of-clone-copies/article66320657.ece> > accessed February 23, 2023

<sup>18</sup> Indian Penal Code, 1860

<sup>19</sup> Unlawful Activities (Prevention) Act, 1967



the Supreme Court rejected a plea for the formation of a Special Investigation Team (SIT) to probe the case, citing the ongoing investigation by the NIA.<sup>20</sup>

The Bhima Koregaon case has been under close observation by the Supreme Court of India, and the court has made several significant observations. One such observation was made in January 2021 when the court put a hold on the arrest of activist Gautam Navlakha, who was one of the accused in the case. The court remarked that Navlakha's detention was not warranted and that the Maharashtra government had failed to provide any conclusive evidence against him.<sup>21,22</sup>

In March 2021, the Supreme Court granted interim bail to activist and poet Varavara Rao based on medical reasons. The court noted that Rao's health was in a delicate state and that he needed immediate hospitalization.<sup>23</sup> In April 2021, the Supreme Court criticized the National Investigation Agency (NIA), which was investigating the case, for not presenting any evidence against the accused. The court stated that the NIA's arguments were based on assumptions and conjectures. In July 2021, the Supreme Court instructed the Maharashtra government to produce all documents related to the arrest of activist Stan Swamy, who had passed away in custody.<sup>24</sup>

The court opined that the papers would help in comprehending the events leading to Swamy's detention and subsequent death. In October 2021, the Supreme Court granted bail to activist and lawyer Sudha Bharadwaj based on medical grounds. The court stated that Bharadwaj's health was deteriorating, and she needed immediate medical care.<sup>25</sup> Overall, the Supreme Court has been vigilantly monitoring the Bhima Koregaon case and has displayed a compassionate approach towards the accused. The court has provided bail to several activists

<sup>20</sup> Team NL, “#Bhimakoregaon: Supreme Court Declines Demand for Sit Probe, Chandrachud Dissents” (*NewsLaundry*) <<https://www.newslaundry.com/2018/09/28/bhima-koregaon-supreme-court-chandrachud-dissents>> accessed February 28, 2023

<sup>21</sup> Gautam Navlakha v National Investigation Agency, [2020] INSC 490

<sup>22</sup> “Gautam P. Navlakha vs the State of Maharashtra on 13 September 2019” <<https://indiankanoon.org/doc/196163848/>> accessed February 28, 2023

<sup>23</sup> Rajagopal K, “Varavara Rao Gets Bail on Medical Grounds” (*The Hindu* August 10, 2022) <<https://www.thehindu.com/news/national/sc-grants-bail-to-varavara-rao/article65753074.ece>> accessed February 28, 2023

<sup>24</sup> Pti, “Maharashtra Govt Submits Medical Records of Late Priest Stan Swamy in HC” (*The Hindu* July 13, 2021) <<https://www.thehindu.com/news/national/maharashtra-govt-submits-medical-records-of-late-priest-stan-swamy-in-hc/article35300923.ece>> accessed February 28, 2023

<sup>25</sup> Amit Anand Choudhary / TNN / Dec 8 2021, “Sudha Bharadwaj: Supreme Court Upholds Bail for Sudha Bharadwaj, Junks NIA Ple: India News - Times of India” (*The Times of India*) <<https://timesofindia.indiatimes.com/india/supreme-court-upholds-bail-for-sudha-bharadwaj-junks-nia-plea/articleshow/88153381.cms>> accessed February 28, 2023

based on medical reasons, emphasizing the importance of human rights and safeguarding the well-being of the accused. Additionally, the court has been critical of the NIA's investigation and has called for more evidence to be presented against the accused.

## DECISION

Five prominent individuals, including Romila Thapar, Devaki Jain, Prabhat Patnaik, Satish Deshpande, and Maja Daruwala, filed a writ petition on August 29th, 2018, challenging the detention of five renowned human rights activists, namely Gautam Navlakha, Sudha Bharadwaj, Varavara Rao, Arun Ferreira, and Vernon Gonsalves, under the Unlawful Activities (Prevention) Act, 1967 (UAPA).<sup>26,27</sup> The activists were accused of instigating the Bhima Koregaon violence and having ties with the banned terrorist group, the Communist Party of India (Maoist). The petition sought the release of the accused and the appointment of a Special Investigation Team (SIT) for further investigation. On September 28th, 2018, a 3-Judge Bench of the Supreme Court, comprising Chief Justice Dipak Misra and Justices A.M. Khanwilkar and D.Y. Chandrachud, delivered a split verdict in the Bhima Koregaon Case, with Justice Khanwilkar delivering the majority opinion on behalf of himself and CJI Misra, and Justice Chandrachud authoring the dissenting opinion.<sup>27</sup>

According to the petitioners, the arrests made were baseless and lacked evidence, and the accused individuals were not even present at the event that triggered the Bhima Koregaon violence. The petitioners argued that those who were arrested were human rights activists who had expressed dissent against the government in the past.<sup>28</sup>

They believed that such arrests would hurt the minds of other activists. In contrast, the respondents argued that the petitioners had no right to question the arrests as they were not involved in the matter. The Pune police defended their actions, claiming to have found incriminating evidence on the accused individuals' electronic devices that indicated a plot to assassinate the Indian Prime Minister. However, the petitioners rejected these claims as propaganda.<sup>26</sup>

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<sup>26</sup> Thapar R, "Release the Wrongfully Arrested Activists: Full Text of Petition Filed by Romila Thapar and Others" (*Scroll.in* August 29, 2018) <<https://scroll.in/article/892373/release-the-wrongfully-arrested-activists-full-text-of-petition-filed-by-romila-thapar-and-others>> accessed February 28, 2023

<sup>27</sup> *Romila Thapar and Ors. v Union of India and Ors.*, Writ Petition (Criminal) No. 260 of 2018, Supreme Court of India (2018)



In the majority opinion, Justice A.M. Khanwilkar allowed the Pune police to continue their investigation by the law. The accused individuals confirmed that the current writ petitions should be treated as their own, making them a party to the petition. As a result, the plea to form a Special Investigation Team (SIT) was dismissed since no accused individual is entitled to demand an investigation process of their own or choose their investigation agency. The majority opinion ruled that the accused individuals must approach the appropriate court for bail and forensic analysis of the electronic evidence.<sup>27</sup>

However, in his dissenting opinion, Justice D.Y. Chandrachud raised concerns about the investigation conducted by the Pune police. He questioned their conduct in disclosing selective details to the media while the investigation was still ongoing. He believed that such selective disclosure created a public bias against the accused and cast doubts on the investigation's impartiality, thereby necessitating the need for an SIT.<sup>28</sup>

## ANALYSIS AND CONCLUSION

There is a need for not only more rigorous laws on freedom of speech but also for a guarantee that authorities are not clouded by prejudice. Free, fair, and speedy trial is something every accused deserves. Even if charges are proven right, prisoners should be treated with dignity, the atrocious treatment of activists denied health and the tragedy of Stan Swamy should not be forgotten. Reliable evidence should be presented, officials shouldn't take unreasonable amounts of time, as it discourages trusting them.

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Illegal raids by police also show the authority they hold; this power dynamic can easily make sure that the innocents suffer if they're not on par with the beliefs of the ruling party or police. This perilous power needs to be curbed, such incidents waver trust in police, and the laws regarding it should be taken more seriously. Many activists have been granted bills on medical grounds, etc. Yet it should not escape our attention that their legally guaranteed rights have been denied for years. The attitude with which political dissenters are treated by officials speaks volumes about how the ruling government views them as. The laws regarding violent dissent are necessary which is undeniable, but it should also be acknowledged that the accused of the violent acts are guilty and not targeted by authorities solely based on their critique of the system or ruling party.

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<sup>28</sup> "Bhima Koregaon: Judgment Summary" (*Supreme Court Observer* July 8, 2022)

<<https://www.scoobserver.in/reports/bhima-koregaon-judgment-summary/>> accessed February 23, 2023

In the end, it should be noted that a struggle toward justice is needed even if it's necessary to oppose a legal body. Prison authorities should understand that even if they're responsible for prisoners with diverse crimes, they need to treat them with humanity. The government exists for us, it should be functioning for us, although laws on extreme measures are necessary, agitating towards authority for hatefully targeting activists without proper involvement is needed.

