

# Fighting for life: Human Rights Defender Varavara Rao



P Varavara Rao, 81-year old Human Right (Image: PTI)



Image : [Wikipedia](#)

*A report by*



Collective Against the Violation and Abuse of Civil and Human Rights

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# Fighting for life: Wrongful arrest and deteriorating health of 80-year-old Human Rights Defender Varavara Rao

## Background

Varavara Rao, **81-year-old ailing activist from the state of Telangana**, a renowned poet, journalist, literary critic, public speaker, and an acclaimed academic, is well known for his progressive writings. He has been [jailed](#) intermittently since 1973, always for standing up for oppressed communities.

In the latest instance, he was arrested and jailed, along with 10 other activists, for alleged involvement in organising 'Elgar Parishad' and in violence which erupted in Bhima Koregaon in January 2018. He was arrested and booked under several serious charges under the draconian Unlawful Activities (Prevention) Act. He has been in judicial custody for the **last 22 months and remains imprisoned in the overcrowded Taloja jail in Mumbai, Maharashtra**, where his bail applications have been rejected on multiple occasions even when he has been suffering from various medical ailments. Recently, Rao was tested positive for COVID-19, owing to being part of a vulnerable category (old age and low immunity) but primarily because of poor **administration and handling of the situation by jail authorities**. Only now he has been admitted to JJ Hospital after multiple complaints about health and underlying health issues. These factors under normal circumstances are sufficient enough to grant regular bail, however, even during the current extraordinary circumstances created by COVID-19 the court has decided to ignore these factors and deny Rao even interim bail on humanitarian grounds.

There is no reason by law or by conscience to keep him in judicial [custody](#), keeping in mind the lack of evidence, his deteriorating health and his voluntary cooperation to all investigations. **Mr. Rao is in custody at a trial stage for 22 months, where the original charge sheet filed by the authorities doesn't even mention any accusations against Rao. His life is at stake.** On the 19<sup>th</sup> of July Mr. Rao has been moved to Nanavati hospital for further neurological and urological [treatment](#).

## Arrest and pending trial for 22 months

On 31.12.2017, an event called 'Elgar Parishad' was organised to commemorate 200 years of the Battle of Koregaon Bheema. This [battle](#) is significant to the Dalit community in India who consider it to signify their victory over caste oppression. Rao was charged with criminal conspiracy for organizing the event and giving inflammatory speeches in it. **Evidently, he was not even present at the event** [Admitted in the charge-sheet filed by the Pune police]. This preceded the gathering at **Bhima Koregaon on 01.01.2018**, where few [Hindutva](#) organisations planned and perpetuated violence against the Dalits. Without any prima facie evidence against Rao indulging in any violent activities, he was levelled with charges of conspiring, or attempting to murder the Indian Prime Minister & waging [war](#) against the Indian government. The organisers of the event denied this and persisted that their motive was to spread the message of fighting communal forces. They took the oath of the Constitution not to vote the communal forces in the elections.

The case has been transferred from Maharashtra government to National Investigative Agency (NIA) by Ministry of Home Affairs (MHA). While the police claim that a damaged hard-disk was seized from Mr. Rao's house, his lawyers have [denied](#) it. Hence, the unjust pendency of the case itself amounts to punishment.

## Deteriorating Health & COVID-19

The Supreme Court of India has directed release of under-trial detainees to contain the coronavirus spread in prisons and considering the threat posed to the life of under-trial prisoners. **Almost 800 persons have been infected with COVID-19 and four persons have already died in Maharashtra prisons, which are overcrowded by 150%.**

Varavara Rao, 81, is suffering from multiple infirmities such as **Coronavirus, prostate enlargement, Oedma/anarca, high blood pressure and heart conditions**. (See Annexure, Dismissal order of Varavara Rao). His family and advocates [claim](#) that his health has deteriorated, and he is delirious. On 15.05.2020, the 2nd bail application was moved on health grounds and in the light of the 2nd report by High Power Committee (HPC) constituted by orders of Supreme Court in *suo moto* W.P.(C) No. 1/2020 dated 10.05.2020. Despite repeated orders the prison did not supply Rao's medical records till 05.06.2020.

On 28.05.2020, on the complaints of **dizziness, syncope, he fell in the bathroom**, and was taken to JJ Hospital and in a [hasty](#) manner. However, he was taken back to prison without complete treatment. This was done just to show that his health is stable, as his bail was pending before a special NIA Court.

After detailed arguments, the bail on health grounds (citing multiple health issues and comorbidities like **hypertension, heart ailment**) was rejected on 26.06.2020 by the Special Judge, NIA Court, Greater Bombay, stating that the prison authorities have ensured proper medical care and will continue to do so. The Court while rejecting Rao's plea ignored the humanitarian grounds but incorrectly relied on the technical embargo provided under the draconian section 43D(5) of the UAPA Act. The Section not only makes it virtually impossible for an accused to get bail, but even the interpretation adopted by the courts has an effect of pre-judging the accused as guilty at the bail stage on merits. It is only as a result of continuous calls from his lawyers, family, wide media coverage, & susceptibility to COVID-19, that the prison authority eventually had to shift Rao to JJ Hospital on 12.07.2020, where on 16.07.2020 **he was tested positive for COVID-19**. It is evident that this occurred owing to the lack of medical attention and social distancing norms in the overcrowded prison. The True Copy of the order passed by the Special Judge Bombay, at Mumbai dated 26.06.2020 is annexed.

## Violation of Human Rights

The Detention and criminalization of human rights defenders and activists is not only in violation of the fundamental rights guaranteed in the Indian Constitution under Article 14, 19 and 21 of the Constitution of India, but

also against various rights guaranteed under the international human rights law. **In arresting, lack of proper medical treatment and denying bail to Rao due to medical reasons, the Indian government is in violation of the following legal provisions:**

1. **Right to peaceful assembly and association:** The right to unrestricted assembly that is in conformity with the law as guaranteed under Article 21 of the International Covenant on Civil and Political Rights (**ICCPR**) and Article 20 of the Universal Declaration of Human Rights (**UDHR**).
2. **Right to be free from torture, inhuman or degrading treatment:** The right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment as recognized in Article 7 of the ICCPR and Article 5 of the UDHR.
3. **Non-Discrimination:** The right to a fair and public hearing by an independent and impartial tribunal, in full equality, in the determination of their rights and obligations and of any criminal charge against them as recognized in Article 10 of the UDHR.
4. **The right to privacy:** The right of everyone not to be subjected to arbitrary or unlawful interference with their privacy, family, home or correspondence, nor to unlawful attacks upon their honour and reputation; and the right to the protection of the law against such interference or attacks; as guaranteed under Article 17 of the ICCPR and recognized in Article 12 of the UDHR.
5. **Right to dignified treatment for prisons:** The United Nations' Standard Minimum Rules for Treatment of Prisoners and International Covenant on Prisoners' Rights also call for dignified treatment of prisoners leading to their reintegration into society and no further infliction of pain other than the imprisonment itself.
6. **Prisons Act, 1894** enacted for the functioning of the prisons, provides certain statutory rights to the prisoners
  - a. **Section 4** of the Prisons Act provides for accommodation and sanitary conditions for prisoners.
  - b. **Section 7** provides for shelter and safe custody of the excess number of prisoners who cannot be safely kept in any prison.
  - c. **Section 24(2)** provides for examination of prisoners by qualified medical officers.
  - d. **Section 35** provides for treatment of undertrials, civil prisoners, parole and temporary release of prisoners.

- e. **Section 37** provides that a prisoner must be provided with a medical officer if he is in need or if he appears out of health in mind or body.
7. **Right to be provided with proper medical care:** The UNHRC's position is that adequate or appropriate and timely medical care must be provided to all detainees as part of state duties to ensure the enjoyment by all persons of rights such as that of **Article 6** on the right to life, **Article 7** on the prohibition on torture or cruel, inhuman or degrading treatment and punishment, and **Article 10** on the right to human treatment of prisoners. In its jurisprudence, the UNHRC often also points to the UN Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), which were adopted unanimously by the UN General Assembly in 2015, to reinforce the obligation of States to provide medical care and treatment for sick prisoners. The following Rules draw attention to the duty to provide prisoners with medical assessment, care and treatment:
    - a. **Rule 25:** Every prison shall have in place a health-care service tasked with evaluating, promoting, protecting and improving the physical and mental health of prisoners, paying particular attention to prisoners with special health-care needs or with health issues that hamper their rehabilitation.
    - b. **Rule 26:** The health-care service shall prepare and maintain accurate, up-to-date and confidential individual medical files on all prisoners, and all prisoners should be granted access to their files upon request. A prisoner may appoint a third party to access his or her medical file. Medical files shall be transferred to the health-care service of the receiving institution upon transfer of a prisoner and shall be subject to medical confidentiality.
    - c. **Rule 27:** All prisons shall ensure prompt access to medical attention in urgent cases. Prisoners who require specialized treatment or surgery shall be transferred to specialized institutions or to civil hospitals. Where a prison service has its own hospital facilities, they shall be adequately staffed and equipped to provide prisoners referred to them with appropriate treatment and care. Clinical decisions may only be taken by the responsible health-care professionals and may not be overruled or ignored by non-medical prison staff.