



**PERMANENT MISSION OF INDIA
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The Permanent Mission of India to the Office of the United Nations and other International Organizations in Geneva presents its compliments to the Office of the High Commissioner for Human Rights and, with reference to the Joint Urgent Appeal No.UA IND 7/2016 dated 16th September 2016 from the Working Group on Enforced or Involuntary Disappearances and the Special Rapporteur on the situation of human rights defenders, has the honour to enclose a detailed response from the Government of India.

The Permanent Mission of India to the Office of the United Nations and other International Organizations in Geneva avails itself of this opportunity to renew to the Office of the High Commissioner for Human Rights the assurances of its highest consideration.



**Office of the High Commissioner for Human Rights
Special Procedures Branch, TESPRDD
Palais Wilson
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Point No. 1: Are the facts alleged in the above summary of the case accurate?

- The issues raised in the Joint Communication regarding alleged arbitrary detention and arbitrary arrest of Mr. Khurram Parvez are not acceptable on the following grounds:
 - i. Since 2000, Mr. Khurram Parvez is associated with the Jammu & Kashmir Coalition of Civil Society (JKCCS). In the garb of being a human rights activist, he has been working against the interests of State of Jammu & Kashmir (J&K). He has been involved in anti-India activities to disrupt the public order by instigating and attracting more and more youth of J&K to resort to organized violent protest targeting security institutions. He has often resorted to false propaganda, criticised and challenged the efforts and plans to bring normalcy in J&K.
 - ii. He has been closely in touch with secessionist leaders during the current violent unrests in the Indian State of J&K. During the civil unrest in Kashmir that began in the aftermath of the death of Hizbul Mujahideen terrorist Burhan Wani in police encounter on 8 July 2016, Mr. Khurram Parvez incited the people for violent protests and secessionists. On many occasions, he met the separatist leader at his Hyderpora, Budgam residence to chalk out strategies whereby the unrest and violent protest continues and the situation is not normalized.
 - iii. For his activities against the public order, Mr. Khurram Parvez was taken into preventive custody Under Section (U/S) 151, 107 Code of Criminal Procedure (Cr.PC) on 16th September, 2016 and lodged in Sub-Jail, Kothibagh, Srinagar and subsequently shifted to District Jail, Kupwara. He was subsequently released as his custody was required in the following cases registered on different dates against him:
 - i) Case First Information Report (FIR) No. 74/2016 U/S 307, 147, 148, 336, 149 RPC of P/S R.M Bagh.
 - ii) Case FIR No. 72/2016 U/S 147, 148, 336, 332 RPC of P/S R.M. Bagh.
 - iii) Case FIR No. 78/2016 U/S 147, 148, 336 RPC of P/S R.M Bagh.

iv) Case FIR No. 39/2016 U/S 147, 148, 149, 336 RPC of P/S Zadibal.

- iv. He was re-detained at Kupwara and brought to Srinagar on 21.09.2016 and on the same date was detained under the provisions of Jammu and Kashmir Public Safety Act, 1978 under the orders of District Magistrate Srinagar vide Order No. DMS/PSA/46/2016 dated 21.09.2016. He was then transferred to Central Jail, Kot Bhalwal, Jammu where he is presently lodged.

Taking into account the above, it is clear that Mr. Khurram Parvez has been put under preventive detention to restrain him from indulging in activities which are prejudicial to public order. Besides, it is found that the ordinary law has not been found adequate to deter him from indulging in acts of anti-India activities, which left the law enforcement agencies with no option but to invoke the provisions of the J&K Public Safety Act, 1978 against him. The grounds of detention under the provisions of the J&K Public Safety Act, 1978 were provided to Mr. Khurram Parvez at the time of his detention and are known to him.

Point No. 2: Please provide information on the reasons for not allowing the abovementioned person to travel.

- On 14 September, 2016 Mr. Khurram Parvez who was to travel to Geneva by Qatar Airways was stopped by immigration officials at the Indira Gandhi International Airport, New Delhi. He was not allowed to travel to Geneva as his visit could have delayed the investigation in the cases registered against him. The responsibility to cooperate with the Law Enforcement Agencies lies with him. By travelling out of India, at that stage he was escaping that responsibility.

Point No. 3 & 4: 3. Please provide information concerning the legal grounds for the arrest and detention of the abovementioned person and how these measures are compatible with international norms and standards as stated, *inter-alia*, in the UDHR and ICCPR. Please provide information on whether all detainees have access to family members, legal counsel, and medical personnel

4. Please indicate what measures have been taken to respect and protect Mr. Parvez's right to communicate freely and without reprisals with the United Nations, its representatives and mechanisms in the field of human rights, including the Human Rights Council and Universal Periodic Review].

- Mr. Khurram Parvez was provided necessary medical assistance and no hindrance whatsoever was caused in his legal assistance. All prisoners including Mr. Khuram Parvaiz are being provided adequate facilities regarding interviews with their family members frequently, subject to security requirements. In this connection, Manual for the Superintendence and Management of Jail in the State of Jammu and Kashmir (2000) is being followed strictly.
- Various institutions of the Indian state are working together to ensure that the fundamental rights of the Indian citizens in the State of Jammu and Kashmir are not infringed upon, and required remedies under the law are available to them easily.
- It may be noted that:
 - i. India is a party to International Convention on Civil and Political Rights (ICCPR), 1966.
 - ii. Article 19 (2) of ICCPR *provides for* right to freedom of expression; nonetheless, 19(3) states that the exercise of the right carries with it special duties and responsibilities and therefore is subject to certain restrictions, as are provided by law of the State party and are necessary (a) for respect of the rights or reputations of others; (b) for the protection of national security or of public order (*ordre public*), or of public health or morals.
 - iii. Article 21 of ICCPR, recognises the right of peaceful assembly; however, restriction may be placed on the exercise of this right in conformity with the law of the State party and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others.
 - iv. Further India has made a declaration concerning Article 19(3) and 21 of

ICCPR that the provisions of the said [article] shall be so applied as to be in conformity with the provisions of Article 19 of the Constitution of India.

- The Constitution of India guarantees to all citizens fundamental rights, such as right to freedom of speech and expression and to assemble peaceably and without arms under Article 19.
 - i. However, with regard to the right of freedom of speech and expression, the State could make any law, in so far as such law imposes reasonable restrictions on the exercise of the right in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence (Article 19(2) of the Constitution of India).
 - ii. The right to assemble peaceably and without arms shall not prevent the State from making any law imposing, in the interests of the sovereignty and integrity of India or public order, reasonable restrictions on the exercise of the right (Article 19(3) of the Constitution of India).
- This is neither a case of Enforced Disappearance nor a reprisal. We note with concern that the Working Group on Enforced or Involuntary Disappearances and Special Rapporteur on the situation of human rights defenders have rushed to conclusions based on unsubstantiated allegations.
