



संयुक्त राष्ट्र कार्यालयों में  
भारत का स्थायी मिशन, जिनेवा  
Permanent Mission of India to the  
United Nations Offices at Geneva  
9, Rue du Valais, 1202 Geneva  
Tel: 022 906 86 86 ; Fax: 022 906 86 96  
E-mail: india.geneva@mea.gov.in

**NV. GEN/PMI/353/10/2019**

**31 July 2020**

The Permanent Mission of India to the Office of the United Nations and Other International Organizations in Geneva presents its compliments to the Special Procedures Branch of the Human Rights Council and has the honour to refer to the Communication No. AL IND 6/2020 dated 04 May 2020 from the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on minority issues and the Special Rapporteur on freedom of religion or belief regarding human rights condition in Jammu and Kashmir following 5<sup>th</sup> August 2019.

The Permanent Mission of India would request the Special Procedures Branch of the Human Rights Council to bring the following information to the attention of the Special Rapporteurs: Our response is exclusively meant for the above Joint Communication and should not be linked with the remote reports on Kashmir published by OHCHR or any matter raised therein.

India has a secular polity and independent judiciary and a range of national and state Human Rights Commissions that monitor compliance with human rights. The Constitution of India guarantees equality before law to all its citizens. Part III of the Constitution, which deals with the Fundamental Rights provides in Article 14 people's right to 'equality before the law' and 'equal protection of the laws'. Acknowledging that 'equality' does not imply equal treatment of un-equals, the Indian Constitution provides for constitutionally mandated positive discrimination for minorities (specifically Article 30). India also has National and State Commissions that monitor complaints from minority communities regarding issues of discrimination and disadvantage faced by them, if any.

The Constitution of India also provides right to life and liberty and against arbitrary arrest; no person to be convicted of any offence except for violation of a law in force; right not to be deprived of life or personal liberty except according to procedure established by law; right of person arrested to be produced before a

magistrate within 24 hrs.; right to be informed of the grounds of arrest and right to be defended by a legal practitioner etc.

One of the significant Constitutional remedies is under Articles 32 and 226 of the Constitution of India. Those persons whose rights have been violated have the right to directly approach the High Courts and the Supreme Court for enforcement of their Fundamental Rights. The Courts are empowered to issue appropriate directions, orders or writs including writ of Habeas Corpus.

To strengthen the constitutional guarantee against arbitrary arrest and detention, and in order to limit the abuse of the arrest power, the Supreme Court issued guidelines in 2014 directing police officials not to arrest persons for offences carrying sentences of seven years or less, except in exceptional circumstances, and directed judicial magistrates to ensure compliance with arrest norms. Indian law prohibits torture. The right to life enshrined in Article 21 of the Constitution encompasses the right to live with dignity. The Indian Penal Code prescribes stringent punishment for offences that may amount to Torture or Cruel, Inhumane or Degrading treatment.

This is to inform that Jammu and Kashmir has been reorganized into two Union Territories of Jammu and Kashmir and Ladakh from October 2019. The jurisdiction of National Human Rights Commission (NHRC) has been extended to the Union Territories of Jammu-Kashmir and Ladakh from 31 October 2019. Subsequently, the National Human Rights Commission of India, exercising this jurisdiction, has asked the Union Territories of Jammu and Kashmir and Ladakh to intimate it about any custodial death within 24 hours and the encounter deaths within 48 hours of such incident as per its guidelines to all States and Union Territories with a view to protect and promote human rights on 2<sup>nd</sup> July 2020. In a letter dated 30<sup>th</sup> June 2020, NHRC has also requested both the Union Territories to pass suitable instructions to the concerned for compliance of all instructions issued by the Commission to send all requisite reports including post-mortem, videography and magisterial enquiry report in all custodial deaths and encounter deaths.

It may be noted that the erstwhile State of Jammu and Kashmir was not under statutory obligation to follow the mandate of the National Human Rights Commission of India by sending intimations, in such cases of deaths in custody or encounter, in view of protection given in respect of subjects mentioned in List II of VII Schedule of the Constitution (State subjects) in the Protection of Human Rights Act. But after Amendment of the Protection of Human Rights Act in the year 2019, there is no prohibition of exercising jurisdiction by the Commission like in all other States and Union Territories. Therefore, it is incumbent upon the Union Territories of Jammu and Kashmir to follow the NHRC guidelines issued

by the NHRC, India in case of custodial and encounter deaths, happened within the Union Territories of Jammu and Kashmir and Ladakh.

India has an independent and vibrant judiciary. Further, Indian judiciary has made substantive expansion in the concept of Human Rights through its judicial pronouncements over the years.

In keeping with the spirit of promotion and advancement of Human Rights, the responses to the concerns raised by the Joint Communication sent by the Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment of Punishment; the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions; the Special Rapporteur on Minority Issues, the Special Rapporteur on Freedom of Religion or Belief are provided in the subsequent Paras. However, it is only appropriate to put on record that the concerns raised show a selective compilation of largely unverified information and appear overtly prejudiced with an intention to build a false narrative.

On Tawseef Ahmad: Investigation conducted in the matter has revealed that one person by the name of Tawseef Ahmad had willingly gone to Shadimarg camp to enquire regarding his younger brother Abid Hussain Wani who was posted at Shadimarg camp and was removed by the authorities after they got to know that he might have been in touch with militants. Thus, there is no question of alleged torture having been carried out in Army Camp.

On Mufti Sheeraz Ahamad and his father-in-law, Mohammad Ahsan: Investigations established that no operation was carried out by Indian Army on 16 February 2019 at Wathoo.

On Mohammad Ishaq Lone : As per investigations, there are no records of the alleged incident of Mohammad Ishaq Lone having called to the Army camp for questioning in any connection. There is neither any complaint nor any authority to whom this issue has been reported including National Human Rights Commission.

On Rizwan Assad Pandit: Government has ordered an enquiry in the case and a First Information Report (FIR) No. 09/2019 u/s 224RPC has been filed by the police in the case.

On [REDACTED] was involved in stone pelting on security forces at Dharmuna Army Camp on 24 May 2019. The Security forces exercised extreme restraint to dissuade the crowd. When the unruly mob did not stop pelting stones, security forces had to fire smoke shells and blank rounds to disperse the crowd. Five individuals including [REDACTED] were

subsequently apprehended by Security Forces and were immediately handed over to J&K Police for further actions in accordance with law. The detainees were kept in PP Soibugh, PS Budgam. The individual was subsequently released by the police authorities.

On Arif Wani : No individual by the name of Arif Wani was ever brought to the Army Camp for questioning. All investigations of civilians, when done, are in the presence of civil Police Representatives and are conducted in accordance with the provisions of Armed Force Special Power Act (AFSPA)

On Riyaz Ahmed Thickrey: First Information Report (FIR) has been lodged in the case.

On [REDACTED] : No such incident of human rights violation on [REDACTED] could be ascertained.

On [REDACTED] : He was arrested on 19 September 2019 but was released on the same day. Since he turned out to be a minor, on 20 September, 2019 his father was made to give an undertaking that his son would not take part in stone pelting.

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 Special Procedures Branch of the Human Rights Council, the assurances of its highest consideration.

**The Secretariat of the Human Rights Council,  
(Kind attn: Chief of the Special Procedures Branch)  
8-14 Avenue de la Paix  
Palais des Nations  
CH-1211 Geneva 10, Switzerland  
Email: [registry@ohchr.org](mailto:registry@ohchr.org)**

