

Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on minority issues; the Special Rapporteur on extreme poverty and human rights and the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance

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Excellency,

We have the honour to address you in our capacity as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the situation of human rights defenders; Special Rapporteur on minority issues; Special Rapporteur on extreme poverty and human rights and Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, pursuant to Human Rights Council resolutions 34/18, 32/32, 34/5, 34/6, 35/19 and 34/35.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the alleged judicial harassment of and death threats received by Mr. **Rajat Kalsan**.

Mr. Kalsan is a Dalit human rights defender and a lawyer who advocates for the rights of Dalit communities in Haryana and has been vocal regarding human rights violations based on caste discrimination. Mr. Kalsan has represented Dalit people in judicial proceedings involving gang-rapes, killings and house-burnings. He also conducts awareness trainings on the constitutional rights for Dalit community youths in rural areas and is associated with several civil society groups advocating for non-discrimination towards Dalit people.

According to the information received:

In July 2017, Mr. Kalsan assisted Dalit villagers from Bhatla, Hansi, to file a criminal complaint regarding a social boycott allegedly imposed upon them as a result of caste-based discrimination emerging from a water dispute.

On 15 June 2017, seven men from the dominant caste community allegedly assaulted six people from the Dalit community who had demanded the right to have their turn in a queue for filling up water. The police subsequently registered a First Information Report under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. The persons who registered this complaint allegedly faced subsequent pressure from police and the dominant castes to

withdraw or settle the case through a negotiation. When the Dalit community refused to comply, a social boycott was imposed on them. The boycott reportedly violated the Dalit villagers' rights to freedom of assembly and of association and to freedom of expression as it prevented their participation in community gatherings, use of social commons and enjoyment of employment rights.

On 2 September 2017, Mr. Kalsan attended and assisted the meeting of a fact finding committee, which had been set up by the High Court of Punjab and Haryana to inquire about the social boycott. Mr. Kalsan's engagement in the fact-finding committee's work resulted in him receiving death threats and being exposed to possible attacks from representatives of castes who opposed his work advocating against caste-based discrimination. When Mr. Kalsan arrived at the venue where the meeting was scheduled to take place, he was allegedly confronted by a group of approximately 200 persons. He reports hearing some of them say, "He is here, we will kill him". When Mr. Kalsan attempted to drive away, he was allegedly chased for five kilometers by people on four motorcycles. On the same day, he filed a written complaint to the Senior Superintendent of Police in Haryana asking for protection and investigations into the events of the day. The police allegedly refused to register a First Information Report (FIR), which would constitute the first step in criminal investigations.

On 11 September 2017, Mr. Kalsan reportedly filed an official petition to the High Court of Punjab and Haryana requesting that he receive pre-arrest bail. He also registered a complaint on the incident of 2 September 2017 to the National Commission of Scheduled Castes.

On 14 September 2017, the police registered a criminal case against Mr. Kalsan, allegedly accusing the defender of encouraging Dalit villagers to file false complaints regarding caste-based discrimination in Hansi, Haryana State. Mr. Kalsan is reportedly accused under the following sections of the Indian Penal Code - section 109 (abetment), 120-B (criminal conspiracy), 153A (promoting enmity between religious groups), 153B (imputations prejudicial to national interests), 193 (false evidence), 211 (false charges of offence), section 389 (threat to public servant) 505 (statements conducing to public mischief) and 506 (criminal intimidation).

On 4 October 2017, a person associated with Mr. Kaslan allegedly received a verbal threat warning that a compromise should be reached on the social boycott, otherwise they would kill both the receipt of the threat and Mr.Kalsan.

Mr. Kalsan has since fled his home fearing for his safety and suspended his legal practice.

It is known that Mr. Kalsan has received numerous threats a result of his human rights work in the past. He was granted police protection in 2011 but this was allegedly withdrawn in 2016 without reassessment of the risks he may currently face.

Concern is expressed at the allegations of judicial harassment against Mr. Kalsan which seem to be directly related to his peaceful and legitimate activities as a human rights defender and lawyer working to represent the Dalit minority in cases involving allegations of human rights violations based on caste discrimination. We express concern that the harassment of Mr. Kalsan may have a deterrent effect on individuals seeking to raise awareness about the rights of minorities in India.

Additional concern is expressed related to the fact that Mr. Kalsan faces multiple and intersecting forms of discrimination and violence based on his caste as well as his work as a defender of minority rights. In this context, serious concern is expressed for the physical and psychological integrity of Mr. Kalsan due to allegations that he has been receiving and continues to receive death threats. The nature of these threats led to a court order granting Mr. Kalsan police protection in 2011. We are concerned at allegations that this police protection was removed in 2016 without any reassessment of the current risks facing Mr. Kalsan or any explanation as to why the protection is no longer deemed necessary.

While we do not wish to prejudge the accuracy of these allegations, we would like to draw the attention of your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

We would like to bring your Excellency's government's attention to articles 14, 17, 19, 21, 22 and 26 of the International Covenant on Civil and Political Rights, acceded to by India on 10 Apr 1979, which uphold the right to a fair and public hearing by a competent, independent and impartial tribunal on any criminal charges, the right to be free from unlawful attacks on one's honour and reputation, the right to freedom of expression, the right to freedom of peaceful assembly and of association and the right to be free from discrimination on any ground.

We would also like to refer to the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, also known as the UN Declaration on Human Rights Defenders, in particular its articles 1, 2, 5, 6, 9 and 12. Article 9 point 3 of the Declaration in particular stipulates that everyone has the right to offer and provide professionally qualified legal assistance or other relevant advice and assistance in defending human rights and fundamental freedoms.

Furthermore, we wish to refer your Excellency's Government to the right to equality and non-discrimination as enshrined, inter alia, in articles 2(1), 14(1), 20(2), and 26 of the International Covenant on Civil and Political Rights as well as in articles 2, 4, 5 and 6 of the the International Convention on the Elimination of All Forms of Racial Discrimination, ratified by India on 03 Dec 1968. Article 5 (b) in particular obliges States Parties to guarantee, without discrimination, the right to security of person and to provide protection from violence or bodily harm, whether inflicted by government officials or by any individual group or institution. In this connection, we recall General Recommendation XXIX on article 1 (1) of the Convention on the Elimination of all forms of Racial Discrimination, which reaffirms that discrimination based on "descent" includes discrimination against members of communities based on forms of social stratification such as caste.

We also call to the attention of your Excellency's Government the international standards regarding the protection of minorities, in particular article 27 of the International Covenant on Civil and Political Rights (ICCPR), as well as the United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities of 1992, which refers to the obligation of States to protect the existence and the identity of minorities within their territories and to adopt measures to that end (article 1), as well as to adopt the required measures to ensure that persons belonging to minorities can exercise their human rights without discrimination (article 4).

In addition, we would like to refer to the 2016 report on minorities and discrimination based on caste and analogous systems of inherited status, by the Special Rapporteur on minority issues. In this report, the Special Rapporteur found that discrimination based on caste and analogous systems is "a serious human rights violation and it infringes upon the basic principles of universal human dignity and equality" and it is also "a major cause of poverty, inequality and social exclusion of affected communities" (A/HRC/31/56, paragraphs 123 and 126). The Special Rapporteur made specific reference to "community boycotts", which are often used as a means to suppress any attempt that may challenge well-established discriminatory practices in caste and caste-like systems (A/HRC/31/56, paragraph, paragraph 70). The Special Rapporteur recommended that States a) adopt specific legislation prohibiting discrimination on the grounds of caste and/or analogous systems and ensure that existing legal frameworks are adequately and fully implemented and include appropriate penalties for acts of caste-based discrimination; b) conduct awareness-raising campaigns at the national and local levels, targeting both affected communities and the wider public to sensitize them against caste-based discrimination and analogous forms of such discrimination; c) effectively address the particular vulnerability of women and girls to caste-based discrimination, and the multiple and intersecting forms of discrimination against them owing to both their gender and unprivileged caste status; d) establish ad hoc supervisory bodies or specific departments in national human rights institutions on caste-based discrimination and provide them with complaint-handling and investigation mandates; e) develop training programmes for law enforcement officers to identify and adequately respond to cases of

caste-based discrimination; f) impose criminal penalties to law enforcement officers who neglect or intentionally decide not to investigate and/or prosecute complaints filed by individuals regarded as “low caste” (A/HRC/31/56, paragraphs 128, 129, 132, 133 and 134).

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency’s Government to safeguard the rights of Mr. Kalsan in compliance with international instruments.

It is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or any comment(s) you may have on the above-mentioned allegations.
2. Please provide further details regarding how the activities of Mr. Kalsan amount to criminal charges being brought against him under sections 109, 120-B, 153A, 153B, 193, 211, 389, 505 and 506 of the Indian Penal Code.
3. Please provide further information on the decision to withdraw police protection from Mr. Kalsan in 2016. Please explain the justification for withdrawing this protection and details of any risk assessments which may have been undertaken in order to confirm this decision.
4. Please provide further information on the allegations that when Mr. Kalsan attempted to report the mob attack which took place on 2 September 2017, the police refused to register a First Instance Report. Please explain the grounds for the refusal to register complaint. In addition, please provide information on the status of Mr. Kalsan’s request for pre-arrest bail and on any ongoing investigations which are taking place regarding his complaint to the National Commission of Scheduled Castes.
5. Please provide information on measures undertaken to improve the responsiveness and effectiveness of domestic protection mechanisms available to human rights defenders, as well as measures undertaken to ensure human rights lawyers do not face retaliation after having presented complaints to the relevant authorities.
6. Please provide detailed information on measures taken by your Excellency’s Government to protect Dalits from caste-related violence committed by

members of dominant castes. In this connection, please provide information on the steps taken to ensure that acts of caste based discrimination and violence are investigated, the perpetrators held accountable, and the victims provided with effective remedies.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person responsible of the alleged violations.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of our highest consideration.

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and expression

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