

KASHMIR INSTITUTE OF INTERNATIONAL RELATIONS

Document for the universal periodic review.

The United Nations General Assembly resolution 60/251 which created human rights council ,provides that countries shall under take a universal periodic review based on the objective and reliable information of the fulfillment by the each state of its human rights obligations and commitments in the manner which ensures ,universality of coverage and equal treatment , the review shall be a cooperative mechanism based on the interactive dialogue with the full involment of the county concerned and with the consideration given to its capacity building needs ,such a mechanism shall complement not duplicate the work of the treaty bodies. The commission on the promotion and protection of human rights has been critized for the selectivity and double standards in responding to the situation of the human rights with the countries. Resolution 60/251 details some guidelines for the working of the council, which will also be relevant for the U P R, mechanism. The resolutions provides that the ,work of the council shall be guided by the principles of universality impartiality ,objectivity and no selective construction of interactive dialogue and cooperation ,with a view of enhancing the promotion and protection of human rights .

Although resolution 60/251 requires the council to consider, objective and reliable information on the fulfillment by each state on the fulfillment of its obligation and commitments of its human rights. But the council Resolution 5/1 of June 2007– provides for the active engagement of NGOs in the UPR. In particular, the review is based on a three-part set of documents – information provided by the State; the HRC’s own documentation and other UN documents on human rights in the country concerned; and information from other stakeholders, including NGOs, which is to be summarized by Office of the High Commissioner for Human Rights (OHCHR), which serves as the HRC Secretariat

In order to utilize this opportunity, K I I R has prepared this document to examine the human rights record of the country named India.

INDIA: The Human Rights Situation in 2007

Any reference to India often includes superlatives, such as the world's largest democracy, the second fastest growing economy and the second most populated country. India has managed to convince the world's diplomatic

community of its status and has become one of the leading voices in the United Nations, which was reflected in the UN Human Rights Council elections. India secured the maximum number of votes among the Asian countries in the election to the Council. Based on this, the government of India projects the country as being a model to several other countries concerning the rule of law and human rights standards. India no doubt achieved a better economic growth. This growth is, however, not an indicator of the improvement of the rule of law and human rights standards in India, even though the government claims otherwise. If economic growth is an indicator of the improvement in the standards of the rule of law and human rights, then the question to be asked is how many of the 1.2 billion Indians benefit from this development? Of the 1.2 billion Indians, an estimated 74% are living in the country's rural villages.² The improvement in the living standards and quality of services available to this 74% of the population, guaranteeing them the basic minimum rights, would be better proof of the improvement of human rights and the rule of law vis a vis economic development in India.

The human rights monitoring agencies have been receiving complaints from different parts of India that paint a dismal picture about the human rights situation found there. Most of these cases are from the villages in India. These cases are posted as urgent appeals by the Amnesty and Asian human rights commission calling for urgent intervention. In most cases the victims are poor, from financially marginalized communities. It is presumed that the justice dispensation system in India does not discriminate between the poor and the rich. However, if it can be shown that the justice dispensation system does not serve the poor and it is out of reach to them, one can safely argue that the system is not catering to the promotion, protection and fulfillment of human rights and fails to ensure the rule of law. These complaints indicate that the justice dispensation system in India is on the brink of collapse. The issues covered are diverse and include custodial killings, enforced disappearances, torture, rape and molestation of women, freedom of expression.

This report highlights the areas of concern that play and contribute to the possible downward spiral of the rule of law that is diminishing the scope of human rights in India particularly in the occupied state of Jammu and Kashmir.

A detailed discussion on the state of human rights in Jammu and Kashmir is hardly possible. Some cases are taken here for illustration. National Human Rights Commission of India has no legal jurisdiction over J&K State.

Deputy Commissioners and Superintendents of Police in all districts of the country are required to report to the NHRC cases of custodial deaths within 24 hours except those of J&K state. Should this practice continue? The state Human Rights Commission is toothless. It has no investigation machinery. In the beginning services of an IGP were provided to it, which is no more so. The members are appointed by the government in disregard of the provision in the law. Its reports are not implemented and sent to deputy commissions. The SHRC law and practice least at par with those in other. J&K State is still governed by archaic Prisons act of 1920 and even does not implement some of its humane provisions. General condition of the jails, physical conditions e.g. overcrowding have been completely neglected. In J&K State, prisoners convicted to all sorts of crimes are so put together that they become hardened criminals.

The fate of under trials leaves much to be desired. Some of them are in jail for much longer period than the sentence provided in law for the crimes which they are alleged to have committed.

Rights of children and women need special attention particularly of orphans and widows. Education and health should be treated as fundamental rights. Every child should have access to a school within walking distance. There are schools but 80% of the school buildings are occupied by the Indian army and due to the fear of the armed forces the people are scared to send their children to schools. The same is true about the health care.

Politically motivated violence slightly decreased, but torture, deaths in custody, enforced disappearances and extrajudicial executions continued to be reported. Some six deaths in custody, 38 enforced disappearances including several juveniles, and 22 extrajudicial killings were reported in 2006 and number is no less in the year 2007.

Impunity..

For years, legal impunity has led to a vicious circle of escalating violence.

Laws such as the Public Safety Act (Jammu and Kashmir), the Armed Forces Special Powers Act and the Disturbed Area Act have spawned abuses in various parts of the country.

The Armed Forces Special Powers Act provides search and arrest powers without warrants and the Disturbed Areas Act gives police extraordinary powers of arrest and detention. Additionally, Section 197 of the Criminal Code of Procedure provides security forces virtual immunity for crimes committed in the course of duty.

A committee headed by Supreme Court Justice Reevan Reddy recommended that the Armed Forces Special Powers Act be scrapped because it is “too sketchy, too bald and quite inadequate in several particulars.” However, the act is still in force.

Security Legislation

Two years after the repeal of the Prevention of Terrorism Act (POTA), cases of all those under the Act had not been fully reviewed within the stipulated period. Moreover, human rights organizations continued to express concern over amendments made to the Unlawful Activities (Prevention Act) which granted special powers to the state, similar to those previously provided by the POTA.

Illustration of some of the cases of human rights violation reported in year 2007.

Srinagar, Aug 3, Molestation attempt of a woman by troops sparked off protest demonstrations in north Kashmir’s Baramulla district Friday. At least 20 protesters were injured when police used force to disperse them.

According to the reports, thousands of people, including children and women, poured onto the streets this morning at Hygam on Srinagar-Baramulla highway and staged a massive protest against the troops of 29Rashtriya Rifles accusing them of attempting to rape a woman, Jana wife of Sonaullah Dar while she was busy in her field at Trambgund area— in Baramulla district’s Sopore township— yesterday evening.

The demonstrators yelling pro-freedom and anti-troops slogans blocked the highway for several hours, the reports said adding that the police swung into action and started heavy baton charging coupled with teargas shelling to quell the protesters demanding a probe into the incident.

Reports say nearly 20 persons including two women were injured in the police action.

The demonstrators claim that the woman was surrounded by army men with an alleged intend to rape, however she raised an alarm catching the attention of her son Showkat Ahmed and other people working in their respective fields and rescued her from their clutches.

The charge was out rightly denied by the army saying that nothing of sort happened

Srinagar, July 5: In yet another incident an India Army soldier of 24 Rashtriya Rifles deployed in Kangan area of Ganderbal district in Indian Occupied Kashmir attempted to molest a 20 year old girl during the mid-day hours. Girl screamed and asked for help. Local people came to the spot and tried to rescue a girl. According to the reports nervous army man tried to escape but people surrounded the army man. Army man opened fire with his service rifle, with the result one Abdul Rahman a footpath vender got killed on the spot and other several sustained serious injuries. But people resisted bravely and finding no option left, Army man shot himself and has been critically injured.

Here it is very important to mention that this is a third molestation attempt by Indian Army in the past 15 days. Despite of huge condemnation by pro freedom political parties as well as Main Stream politicians, these incidents are increasing in the Valley. Army as well as state government has totally failed to punish the culprits.

In the 19 years of conflict in Indian occupied Kashmir , there have been many allegations of rapes and molestations particularly against the Indian troopers. A 1994 United Nations publication (E/CN.4/1995/42, pp.63-69) says that 'during 1992 alone, 882 women were reportedly gang-raped by Indian security forces in Jammu and Kashmir'.

"Basically India uses rape as a war crime and they don't treat it as a HR violation. So it employs all curbs and other tactics on the rights groups to pressurise them to desist from publishing it".

Srinagar, May 03 (): In occupied Kashmir, the High Court has quashed the detention of woman who has been arrested for being allegedly involved in liberation related activities.

Zahida Akhtar, a resident of Narwara-Eidgah in Srinagar was arrested by the Indian police during a raid on her house. On the recommendations of the police the then district magistrate of Srinagar slapped the draconian Public Safety Act (PSA) on the lady.

In December 2006, the High Court dismissed the grounds under which the lady was detained and ordered for her immediate release. However, police did not comply with the court orders and in fact slapped the PSA on the lady for the second time.

Innocent killings 2007.

Name of Victim: Muhammad Yaqoob Mir - 21 years old
Place of incident: Nowpora Srinagar, Jammu and Kashmir
Date of Incident: January25-2007

Agency Involved: 55 Rashtriya Rifles, Indian Army

Source: Local News Paper

Testimony: Muhammad Yaqoob Mir, 25, son of Abdul Aziz Mir of Abi-Nowpora, Dalgate, killed by troops in a fake encounter. The police registered a missing report

and a message was flashed across all police stations and other agencies. In the meantime, Yaqoob's family published his photograph in local newspapers. Finally,

the family received a phone call from Pattan Police Station on Thursday, asking them to identify a body brought by Army's 55 Rashtriya Rifles. His body had bullet marks & tortured.

Name of Victim: Abdur Rahman Padder, 35

Place of incident Larnoo, Kokernag, Jammu and Kashmir

Date of Incident: 28th January 2007

Agency Involved: Special operation Group, Indian Army

Source: Local News Paper

Testimony: Abdur Rahman Padder, 35, son of Ghulam Rasool Padder of Larnoo,

Kokernag, went missing from Batamaloo bus stand here on December 8.

Sources said he was taken to Waskar Ganderbal on 28th January 2007 in the night and killed

in a fake encounter by the cops of Special Operations Group (SOG) of Police from Ganderbal and Sumbal. His face was mutilated with bullets and burnt.

12 Name of Victim: Muhammad Afzal Kumhar, 38

Place of incident: Argam, Tral, Anantnag, Jammu and Kashmir

Date of Incident: Feb 8- 2007 at 8:37 pm

Agency Involved: 42-Rashtriya Rifles, Indian Army

Source: Mr. Waheed Ahmed an eye witness

Testimony: Muhammad Afzal Kumhar, an employee of the Hotel Centaur, Srinager, was in the local mosque when suddenly troops cordoned off the area. Afzal's neighbor Waheed Ahmad saw the soldiers entered the mosque and dragged him out. They placed him against the wall of the mosque and opened fire on him. They killed him in front of his Mother's.

Name of Victim: Tarseem Lal-18

Place of incident: Phalan Mandal, Jammu and Kashmir

Date of Incident: February 17-2007

Agency Involved: Mukwal Jammu State Police

Source: Local news Paper

Testimony: Police picked up 18-year-old Tarseem Lal, on Feb 17 at 8 AM at Phalan Mandal on the outskirts of Jammu city and two hours after police shifted him to hospital where doctors declared him “brought dead. He was tortured to death in custody.

Name of Victim: Names not ascertained

Place of incident: Nowgam, Jammu and Kashmir

Date of Incident: June15-2007

Agency Involved: Special Task Force, Indian Army

Source: Local news Paper

Testimony: The STF brought two persons in a white Gypsy (Jeep) and staged a fake encounter killing the duo on the spot. The villagers said that around 3:30 am on June 14th STF personnel entered their village along with two persons and took them in an orchard where both of them were killed.

According to the villagers who

Buried the two slain men, Their faces were mutilated beyond recognition after the encounter. The complexion and cloths were enough proof to identify them. They were locals.

13Name of Victim: Irfan Ahmed Ghani,

Fayaz Ahmed Khan & Javed Ahmed Bhat

Place of incident: Bandipora, Jammu and Kashmir

Date of Incident: June24-2007

Agency Involved: Indian Army

Source: Local news Paper

Testimony: Army’s claim of killing three infiltrators in Uri sector on June 24 has been contradicted by the family members of one of the slain youth.

They alleged

that the trio were unarmed and were arrested by army and subsequently killed in custody. These youth hailed from the area of Bandipora.

Name of Victim: Mubarik Hussian

Place of incident: Thanda Pani, Jammu and Kashmir

Date of Incident: July1-2006

Agency Involved: Thanda Pani Jammu Police

Source: Local news Paper

Testimony: Mubarik Hussain was killed in detention. He was in custody of police at Bassa Morh near Tikri and tortured to death in fake encounter. His family members

said that the deceased had multiple fractures on legs and arms, which indicated that he was tortured and then shot dead from close range.

Hundreds of Thanda Pani Residents including deceased Mubarak Hussain's relatives and family members staged demonstration at Reasi town.

NAME OF VICTIM ; Abdul Rashid Mir .

AGENCY INVOLVED ,The army posted dryangrdi camp near chowkibal in district kupwara.

Date of incident ; 18oct 2007.

Testimony. Abdul Rashid Mir s/oGhulam Muhammad Mir of Rawathpora District kupwara a school teacher who was on his way to school was killed by the soldiers of the Indian army posted in drangardi camp near marsari in chowkibal kupwara. According to witness Rashid was traveling three kilometers through the dens forests on foot along with two female inmates. Troops had warned Rashid not to accompany the female teachers as the soldiers wanted to harass the female teachers. According to eyewitness soldiers first tortured Rashid and then shot him dead. The cold blooded murder of the school teacher triggered the massive protest against the Indian occupational forces and life came to halt in whole district kupwara .srinager kupwara highway was blocked by the protestors for several days.“Disappearances” are going on in

Jammu & Kashmir despite the fact that the “International Convention for the Protection of All persons from Enforced Disappearance” is signed by India.

Few recent cases of Enforced Disappearances are as follows:

1. Name of victim: Anwar Khan

S\O Jalil Khan

R\O Bandipora, Jammu & Kashmir

Date of Incident: May 24 – 2007

Agency Involved: Indian Army

Indian Army arrested Anwar Khan with another youth Khoshal Khatana who was released after being subjected to torture. But the whereabouts of Anwar

Khan are not known.

2. Name of victim: Jehangir Ahmad Ganie R\O Daulatabad,
Qazigund, Jammu & Kashmir

Date of Incident: January 30-2007

Agency Involved: Indian Special Task Force

Jehangir Ahmad Ganie disappeared after a raid conducted by Special Task Force. Since then his whereabouts are not known.

3. Name of victim:

Mohammad Yaqoob Ganie R\O Daulatabad, Qazigund,
Jammu & Kashmir

Date of Incident: January 30-2007

Agency Involved: Indian Special Task Force

Mohammad Yaqoob Ganie disappeared after a raid conducted by Special Task Force. Since then his

Whereabouts are not known.

4. Name of victim: Sabeel Javaid R\O Daulatabad, Qazigund, Jammu &
Kashmir

Date of Incident: January 30-2007

Agency Involved: Indian Special Task Force Sabeel Javaid disappeared after a raid conducted by Special Task Force. Since then his whereabouts are not known.

VIEWES OF INTERNATIONAL ORGANISATION EXPERTS FROM THE ANNUAL REPORT OF AMNESTY INTERANTIONAL.

The Annual Report of Human Rights for the year 2007, was released on May 23, 2007. The report was released simultaneously across 21 centres in the country, including Mumbai. The report was divided into two parts, a large book that highlighted the violation of Human Rights across the Asia Pacific region, and a smaller India specific booklet.

The panel included Sanjeev Poojary, the regional director and Amit Murugkar, a member of the Mumbai Group of Amnesty International.

Snajeev Poojari, the Regional Director, read excerpts from the report on India. "The world is living in an atmosphere of fear. People are deprived of their basic human rights," he said. He blamed the US as the main perpetrator of violence. He raised the issue of fake encounters in Gujarat and the killing of innocents all over the globe. He referred to projects of infrastructure, SEZ, beautification and large dams as a 'betrayal of basic human rights.'

The report has widely criticised the government for not repealing the authoritarian Armed Forces (Special Powers) Act in Manipur. It refers to the constant abuse of human rights in the states of Jammu and Kashmir and the seven sisters of the north east.

It raises the issue compensation from Union Carbide. The report has also highlighted the subject of capital punishment mentioning that the Government of India sentenced 40 people to death in 2006, although no executions were carried out. Amnesty International is known for its fight against capital punishment the world over. It raised the question of the safety of civilians with reference to the Mumbai train blasts.

In full perspective, the report seeks to move the Indian government in working to make the country a place safe for everyone to live in, with dignity, respect and their basic human rights. It requests the government to stop 'grossly undermining Human Rights in India.'

Human Rights Watch recently reported: 'Everyone Lives in Fear: Patterns of Impunity in Jammu and Kashmir', says Indian security forces have committed torture, "disappearances" and arbitrary detentions. They also continue to execute Kashmiris in fake "encounter killings," claiming that these killings take place during armed clashes with militants. "It's absurd that the world's largest democracy, with a well-developed legal system and internationally recognized judiciary, has laws on its books that prevent members of its security forces from being prosecuted for human rights abuses," Brad Adams, Asia Director¹⁴ at Human Rights Watch reported. "It's time for the Indian government to repeal these laws and re-commit itself to justice for victims of all abuses, Since 1989, the armed secessionist struggle against Indian rule in Jammu and Kashmir has claimed more than 50,000 lives. Almost half-a-dozen people die every day in gun battles, shootings and occasional bomb blasts in the region. Protests also erupt regularly over alleged abuses by Indian troops.

In April, the Central Bureau of Investigation (CBI) Indicted five army officers for the extrajudicial killing of five villagers at Pathribal in March 2000. The officers were charged with fabricating evidence to support their claim that the men were foreign fighters killed in an "encounter" with security forces. The officers had earlier claimed that the men had killed 35 Sikhs at Chittisinghpora four days before the "encounter". When local villagers protested in Brakpora that the five men were innocent villagers, the army opened fire, killing 10 protesters. An inquiry into the Pathribal Incident stalled when it was found that DNA samples had been tampered with.

The above discussion is mainly based on the human rights situation in Indian occupied Jammu and Kashmir .in prevailing circumstances when human rights activist are not allowed to work or monitor human rights in the area freely and international human rights bodies do not have any access to the area ,To make a comprehensive study of the situation is very difficult. The same id true about the other area's of India.

The human rights situation across the India paints a dismal picture .in all cases of human rights violation the common dominator is the local police, The Indian armed forces and the paramilitary forces, and all is done in the name of security of state. The people who are meant for the promoting and protecting the human rights of the people are engaged in the violating the human rights.

Immediate and stringent measures must be taken by the government of Indian to repeal the draconian laws which pave the way for police ,army and the paramilitary forces to continue the human rights violations .

The supreme court of India must come forward to save the lower judiciary .the judicial system that forces a person to wait for years to get justice through legitimate justice dispensation mechanism is making a mockery of justice.

The government of India can no longer suppress the people ,who have been struggling for the right of self-determination. So India has to full fill its commitments of the people's right of self-determination.

Dalits in Indian must be given equal citizens with equal rights.

Thank you

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